

CLERK'S COPY.

**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

**OCTOBER TERM, 1940**

**No. 601**

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**PAUL W. SAMPSELL, AS TRUSTEE IN BANK-  
RUPTCY FOR THE ESTATE OF WILBUR J. DOW-  
NEY, ALSO KNOWN AS W. J. DOWNEY, PETI-  
TIONER,**

**vs.**

**IMPERIAL PAPER AND COLOR CORPORATION**

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**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE NINTH CIRCUIT**

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**WRITING FOR CERTIORARI FILED NOVEMBER 16, 1940.**

**CERTIORARI GRANTED JANUARY 12, 1941.**

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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**Imperial Paper & Color Corp.**

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**NAMES AND ADDRESSES OF  
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**For Appellee:**

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Los Angeles, California. [1\*]

In the United States Circuit Court of Appeals for  
the Ninth Circuit

No. 9422

IMPERIAL PAPER AND COLOR  
CORPORATION,

Appellant,

vs.

PAUL W. SAMPSELL,

Appellee.

CITATION

United States  
of America—ss.

To Paul W. Sampsell, Trustee of Wilbur J. Downey, also known as W. J. Downey, Bankrupt, greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be held at the City of San Francisco, in the State of California, on the 22nd day of January, A. D. 1940, pursuant to an order allowing appeal filed on December 13th, 1939, in the Clerk's Office of the District Court of the United States, in and for the Southern District of California, in that certain cause No. 33121-M, Central Division, wherein Imperial Paper and Color Corporation, is appellant and you are appellee to show cause, if any there be, why the decree, order or

judgment in the said appeal mentioned, should not be corrected, and speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Geo. Cosgrave, United States District Judge for the Southern District of California, this 14th day of December, A. D. 1939, and of the Independence of the United States, the one hundred and sixty-fourth.

GEO. COSGRAVE,

U. S. District Judge for the  
Southern District of Cali-  
fornia.

Service of a copy of the foregoing Citation is acknowledged this 15 day of December, 1939.

CRAIG & WELLER,

By THOS. S. TOBIN,

Attorneys for Appellee.

[Endorsed]: Filed Dec. 18, 1939. [2]

### DEBTORS PETITION

To the Honorable \_\_\_\_\_ Judges  
of the District Court of the United States for  
the Southern District of California, Central  
Division.

The Petition of Wilbur J. Downey, also known  
as W. J. Downey, residence of 1205 South St. An-  
drews Place, Los Angeles, business—821 South  
Flower Street, Los Angeles, in the County of Los  
Angeles, State of California, aforesaid District, and  
by occupation merchant,



Respectively Represents: That he has resided, had domicile and principal place of business for the greater portion of six months next immediately preceding the filing of this petition, at Los Angeles within said judicial district; that he owes debts which he is unable to pay in full; that he is willing to surrender all his property for the benefit of his creditors; except such as is exempt by law, and desire to obtain the benefit of the Act of Congress relating to bankruptcy;

That the Schedule hereto annexed, marked "A" and verified by your petitioner's oath, contains a full and true statement of all debts, and (so far as it is possible to ascertain) the names and places of residence of his creditors, and such further statements concerning said debts as are required by the provisions of said Acts;

That the Schedule hereto annexed marked "B", and verified by your petitioner's oath; contains an accurate inventory of all his property, both real and personal, and such further statements concerning said property as are required by the provisions of said Acts;

Wherefore, your petitioner prays that he may be adjudged by the Court to be bankrupt within the purview of said Acts.

**WILBUR J. DOWNEY,**  
Petitioner.

**RUPERT B. TURNBULL**  
**FRANK HUTTON**

Attorneys for Petitioner.

400 Title Insurance Bldg.



**Oath to Petition**

United States of America,  
Southern District of California,  
Central Division, State of California,  
County of Los Angeles—ss.

I, \_\_\_\_\_,  
the petitioning debtor mentioned and described in  
the foregoing petition, hereby make solemn oath  
that the statements contained therein are true ac-  
cording to the best of my knowledge, information  
and belief.

**WILBUR J. DOWNEY,**  
Petitioner.

Subscribed and Sworn to before me this 13th day  
of November, 1938.

[Seal] **JESSIE M. HUMPHREY,**  
Notary Public in and for the County of Los An-  
geles, State of California.

2/14/39

[Endorsed]: Filed Nov. 18, 1938. [3]

District Court of the United States, Southern District of California, Central Division.

No. 33,121-M in Bankruptcy

In the Matter of WILBUR J. DOWNEY, also known as W. J. DOWNEY,  
Bankrupt.

### ADJUDICATION AND ORDER OF REFERENCE

At Los Angeles, in said District, on November 19, 1938 before the said Court in Bankruptcy, the petition of Wilbur J. Downey, also known as W. J. Downey that he be adjudged bankrupt within the true intent and meaning of the Acts of Congress relating to bankruptcy having been heard and duly considered, the said Wilbur J. Downey, also known as W. J. Downey is hereby declared and adjudged bankrupt accordingly.

It is thereupon ordered that said matter be referred to H. L. Dickson, Esq., one of the referees in bankruptcy of this Court, to take such further proceedings therein as are required by said Acts; and that the said Wilbur J. Downey, also known as W. J. Downey shall attend before said Referee on November 26, 1938 at his office in Los Angeles, California, at 10 o'clock a.m., and shall submit to such orders as may be made by said Referee or by this Court relating to said matter in bankruptcy.

Witness, the Honorable Wm. P. James Judge of the said Court, and the seal thereof, at Los Angeles, in said District, on November 19, 1938.

R. S. ZIMMERMAN,

Clerk.

By H. K. JACOBS,

Deputy Clerk.

[Endorsed]: Filed Nov. 19, 1938. [4]

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[Title of District Court and Cause.]

PRIORITY CLAIM OF IMPERIAL PAPER  
AND COLOR CORPORATION, a corporation.

At Glens Falls, in the State of New York, on the 9th day of May, 1939, came J. H. Pearsall, personally known to me, and made oath and says:

That your deponent is an officer, to-wit: the treasurer, of Imperial Paper and Color Corporation, a corporation, by and under the laws of the State of New York, and is duly and regularly authorized to make this proof of claim and execute the letter of attorney incorporated herein, executes this proof of claim and letter of attorney on behalf of said corporation.

That heretofore the Downey Wall Paper and Paint Co., a corporation, was at and before the filing of the petition in the above entitled matter and still is justly and truly indebted to the claimant herein, to-wit: the Imperial Paper and Color Cor-



poration, a corporation, in the sum of Five Thousand Four Hundred Fifteen Dollars and ninety-five cents (\$5415.95), together with interest thereon, at the rate of six per cent (6%) from the 26th day of September, 1938; and that the nature and consideration of the said debt is as follows:

A balance due upon four (4) promissory notes executed by the said Downey Wall Paper and Paint Co., a corporation, in favor of the claimant herein, on the 26th day of September, 1938, three (3) of which are in the sum of Fifteen Hundred Dollars (\$1500) [5] respectively, one (1) in the sum of Nine Hundred Fifteen Dollars and ninety-five cents (\$915.95); and the copies of the said notes are hereto attached and made a part hereof and marked "Exhibit A".

That the consideration for the said notes was goods, wares, and merchandise sold and delivered by your said claimant to the said Downey Wall Paper and Paint Co., a corporation, within two (2) years last past.

That no part of the said debt has been paid and that there are no set-offs or counterclaims to the same; and that the said claimant has not had or received any manner of security for the said debt whatever.

That your said deponent is informed and believes, and therefore alleges:

That the above entitled bankrupt estate and the trustee thereof, claims and asserts that the Downey



Wall Paper and Paint Co., a corporation, is and was the alter ego of the above named bankrupt and that the trustee herein has procured an order of Court to that effect; and that the said trustee herein has taken possession of the property and assets of the Downey Wall Paper and Paint Co. and has sold and disposed of the same; and claims and asserts the right to administer and distribute the said assets.

That your claimant herein respectfully claims and asserts a claim by priority against the assets of the said Downey Wall Paper and Paint Co. and against the proceeds thereof, as, if, and when the same have been disposed of by the said trustee herein; and asserts a claim and the priority against all funds of the above entitled estate and in the hands of the said trustee thereof, the said claim so asserted being in the said sum of Five Thousand Four Hundred Fifteen Dollars and ninety-five cents (\$5415.95), together with interest thereon, from the 26th day of September, 1938, and respectfully demands that the said claim, as a prior claim, has a prior right to distribution of the funds in the hands of the said [6] trustee so received by him from the sale, or otherwise, of the assets of the Downey Wall Paper and Paint Co., a corporation.

Your claimant also herewith authorizes and appoints Hiram E. Casey to represent your said claimant in the above entitled proceedings, upon any proposal or resolution that may be submitted

at a meeting of creditors of the above entitled bankrupt, by receiving all moneys due as a dividend, or upon a composition or otherwise.

This claim is filed without prejudice to filing a petition or claim against this estate for moneys due claimant herein from the Downey Wall Paper and Paint Co., a corporation.

In Witness Whereof, the said claimant has hereunto caused the subscription to be made by its duly authorized officer as its corporate act, this 9th day of May, 1939.

J. H. PEARSALL,

Treasurer and Deponent.

Subscribed and sworn to and acknowledged before me this 9th day of May, 1939.

[Seal]

HARRY J. HALL,

Notary Public in and for the County of Warren,  
State of New-York. [7]

"EXHIBIT A"

30.00 Int.

\$1500.00

September 26, 1938.

1530.00

One hundred twenty days after date, without grace We promise to pay to the order of Imperial Paper & Color Corp. Fifteen hundred and no cents.....Dollars, For Value received with interest from date at the rate of 6 per

*vs. Paul W. Sampsell*

11

cent per annum until paid. Principal and interest payable in Lawful Money of the United States at ..... and in case suit is instituted to collect this note or any portion thereof, ..... promise to pay such additional sum as the Court may adjudge reasonable as Attorney's fees in said suit.

DOWNEY WALLPAPER AND  
PAINT CO.  
W. J. DOWNEY,

Pres.

No. ....

1/24/39

Due Jan. 26, 1938

23.35 Int.

\$915.95

September 26, 1938.

939.28

On Feb. 26, 1939 without grace We promise to pay to the order of Imperial Paper and Color Corp. Nine hundred fifteen and 95/100 ..... Dollars, For Value received with interest from date at the rate of 6 per cent per annum until paid. Principal and interest payable in Lawful Money of the United States at ..... and in case suit is instituted to collect this note or any portion thereof, ..... promise to pay



such additional sum as the Court may adjudge reasonable as Attorney's fees in said suit.

**DOWNEY WALLPAPER AND  
PAINT CO.**

**W. J. DOWNEY,**

Pres. [8]

No. \_\_\_\_\_

Due 2/26/39

15.00 Int.

\$1500.00

September 26, 1938.

1515.00

Sixty days after date, without grace We promise to pay to the order of Imperial Paper & Color Corp. Fifteen hundred and no cents \_\_\_\_\_ Dollars, For Value received, with interest from date at the rate of 6 per cent per annum until paid. Principal and interest payable in Lawful Money of the United States at \_\_\_\_\_ and in case suit is instituted to collect this note or any portion thereof, \_\_\_\_\_ promise to pay such additional sum as the Court may adjudge reasonable as Attorney's fees in said suit.

**DOWNEY WALLPAPER AND  
PAINT CO.**

**W. J. DOWNEY,**

Pres.

No. \_\_\_\_\_

11/25/38

Due Nov. 26, 1938



22.50

\$1500.00

September 26, 1938.

1522.50

Ninety days after date, without grace We promise to pay to the order of Imperial Paper & Color Corp. Fifteen hundred and no cents .....Dollars, For Value received, with interest from date at the rate of 6 per cent per annum until paid. Principal and interest payable in Lawful Money of the United States at ..... and in case suit is instituted to collect this note or any portion thereof, ..... promise to pay such additional sum as the Court may adjudge reasonable as Attorney's fees in said suit.

DOWNEY WALLPAPER AND  
PAINT CO.

W. J. DOWNEY,

Pres.

No. ....

12/27/38

Due Dec. 26, 1938.

[Endorsed]: Filed Oct. 19, 1939. [9]

In the District Court of the United States, Southern  
District of California, Central Division  
In Bankruptcy No. 33121-M

In the Matter of  
WILBUR J. DOWNEY, also known as  
W. J. DOWNEY,

Bankrupt.

PETITION FOR ORDER TO SHOW CAUSE  
ON PAUL W. SAMPSELL, TRUSTEE, IN  
RE: IMPERIAL PAPER AND COLOR  
CORPORATION

Now comes the Imperial Paper and Color Corporation, a corporation and files this its Petition for Order to Show Cause upon Paul W. Sampsell, Trustee of Wilbur J. Downey, also known as W. J. Downey, a bankrupt, and respectfully represents:

I.

That Paul W. Sampsell is the duly elected, appointed, qualified and acting Trustee in Bankruptcy of the Estate of Wilbur J. Downey, also known as W. J. Downey, Bankrupt.

II.

That heretofore and prior to the bankruptcy of the above entitled Bankrupt, your Petitioner, a corporation organizing and existing under and by virtue of the State of New York, sold and delivered in due course to the Downey Wall Paper and Paint Co., a corporation, goods, wares and merchandise over a period of several years; and that at the date of bankruptcy of the above entitled Bankrupt, there

was a balance unpaid and due to your Petitioner for the said goods, wares and merchandise so sold and delivered as aforesaid, in the sum of Five Thousand Four Hundred Fifteen Dollars and 95/100 (\$5415.95) together with interest thereon of six per cent (6%) per annum on the 26th day of September, 1938, which said balance as aforesaid was represented by four promissory notes executed and delivered by the said Downey Wall [10] and Paint Co., a corporation, in favor of your Petitioner on the 26th day of September, 1938, three of which said notes are in the sum of Fifteen Hundred Dollars (\$1500) each, and one in the sum of Nine Hundred Fifteen Dollars and 95/100 (\$915.95). That the consideration of the said notes, as aforesaid, was the goods, wares and merchandise sold and delivered by your Petitioner in due course and in good faith to the Downey Wall Paper and Paint Co., a corporation, within two years prior to the execution of said notes as aforesaid.

That no part of the said debt as aforesaid, has been paid and that there are no set-offs or counter-claims to the same; and that this Petitioner has not received nor had any manner of security of the said debt whatever.

### III

That your Petitioner is informed, and believes, and therefore alleges:

That the above entitled bankrupt Estate and the Trustee thereof, claims and asserts that the Downey Wall Paper and Paint Co., a corporation, is and



was the alter ego of the above named Bankrupt, and that the Trustee herein has procured an Order of Court to that effect; and that the said Trustee herein has taken possession of the property and assets of the Downey Wall Paper and Paint Co. and has sold and disposed of the same, and claims a right to administer and distribute the said assets.

#### IV.

That your Petitioner herein, respectfully claims and asserts that it has a claim and a right to have the assets of the Downey Wall Paper and Paint Co., or the proceeds thereof, applied to the payment of its obligation against the said Downey Wall Paper and Paint Co., and claims and asserts a right to have the said payment due it as the creditor of the said Downey Wall Paper and Paint Co., prior to and in advance of any payments or [11] distribution out of the proceeds thereof, of the Estate of the above entitled Bankrupt, respectfully alleges and claims as such creditor an equitable lien upon the assets and funds or moneys so received from the sale or disposition of the assets of said Downey Wall Paper and Paint Co., a corporation; and your Petitioner respectfully demands and asserts that the said claim has a prior right to the distribution of the moneys or funds in the hands of the said Trustee so received by him from the sale, or otherwise, of the assets of the Downey Wall Paper and Paint Co., a corporation.

V.

That your Petitioner is informed, and believes, and therefore alleges:

That it is the only existing unpaid creditor of the Downey Wall Paper and Paint Co., and that the said Trustee herein has on hand, in his possession, moneys and funds so received from the sale or disposition of the assets of the Downey Wall Paper and Paint Co., a corporation, so taken possession by him, of approximately the sum of Forty-eight Hundred Dollars (\$4800).

Wherefore, your Petitioner respectfully prays for an Order to Show Cause directed to the said Paul W. Sampsell, as Trustee herein, directing him to appear before the above entitled Court at a time and place to be fixed herein, to show cause, if any he has, why said moneys and funds so received by him from the sale or disposition of the assets of the Downey Wall Paper and Paint Co., a corporation, should not be applied first to the payment of the obligation of the Downey Wall Paper and Paint Co., a corporation, and particularly to the obligation of your Petitioner hereinbefore set forth and described, and for such other and further order as is proper in the premises.

IMPERIAL PAPER AND COLOR  
CORPORATION, a corporation,

By J. H. PEARSALL,

Treasurer.

HIRAM E. CASEY,

Attorney for Petitioner. [12]

United States of America,  
State of New York,  
County of Warren.—ss.

J. H. Pearsall being duly sworn, says: That he is the Treasurer of the Petitioner in the above entitled matter; that he has read the foregoing Petition for Order to Show Cause and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief and as to those matters, that he believes it to be true.

**J. H. PEARSALL.**

Subscribed and Sworn to before me, this 14th day of July, 1939.

**J. EDWARD SINGLETON,**  
Notary Public in and for the County of Warren,  
State of New York. [13]

[Endorsed]: Filed Oct. 19, 1939.

[Title of District Court and Cause.]

**OBJECTIONS TO ALLOWANCE OF CLAIM  
OF IMPERIAL PAPER AND COLOR COR-  
PORATION, AS PRIOR.**

Comes now Paul W. Sampsell, as trustee in bankruptcy for the estate of Wilbur J. Downey, also known as W. J. Downey, and objects to the allowance of the claim of the Imperial Paper and Color Corporation in the sum of \$5,415.95 as a prior claim



against the estate of the above-named bankrupt, for the following reasons, to-wit:

I.

That said proof of debt does not contain facts sufficient to bring said claim within the provisions of Section 64-a or (b) of the Bankruptcy Act of 1898, and Amendments thereto, nor the Bankruptcy Act of 1938, and Amendments thereto;

II.

That it appears on the face of said proof of debt that said indebtedness was contracted on open account and wholly unsecured, and that said claimant has not, and does not claim a lien on the assets of said bankrupt estate.

Wherefore, the trustee prays that said claim be allowed as a general unsecured claim against the bankrupt estate, and that it be disallowed as a prior claim.

PAUL W. SAMPSELL,

Trustee in Bankruptcy.

CRAIG & WELLER,

By THOMAS S. TOBIN,

Attorneys for Trustee. [15]

United States of America,  
Southern District of California,  
Central Division,  
County of Los Angeles.—ss.

Paul W. Sampsell being duly sworn, says: That he is the Trustee in Bankruptcy and Objector in

the foregoing entitled matter; that he has read the foregoing Objections to Allowance of Claim of Imperial Paper and Color Corporation, as Prior, and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief and as to those matters, that he believes it to be true.

PAUL W. SAMPSELL.

Subscribed and sworn to before me this 5th day of June, 1939.

BESS A. ALDRICH,

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Oct. 19, 1939. [15½]

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[Title of District Court and Cause.]

REFEREE'S CERTIFICATE ON REVIEW

I, Hugh L. Dickson, Referee in Bankruptcy in charge of this proceeding, do hereby certify:

That, in the course of such proceedings I, as Referee in Bankruptcy in charge of this proceeding, on April 7, 1939, made and entered an Order decreeing the Downey Wallpaper & Paint Co., a corporation, to be the alter ego of the bankrupt, Wilbur J. Downey, and the stock in trade of the Downey Wallpaper & Paint Co., a corporation, to be assets of the bankrupt estate transferred by the

bankrupt to said corporatoin, with the intent and purpose on his part to hinder, delay or defraud his creditors, and directing that said assets be marshalled for the benefit of the creditors of the bankrupt estate.

That the petitioner herein, Imperial Paper and Color Corporation, was not a party to said fraudulent conveyance proceeding brought by the trustee against the Downey Wallpaper & Paint Co., and its officers.

That the Imperial Paper and Color Corporation was a creditor of the Downey Wallpaper & Paint Co., the bankrupt's fraudulent transferee and alter ego, in the sum of \$5,415.95, which indebtedness was owing to said petitioner by said Downey Wallpaper & Paint Co., on open account and was not secured by *an* lien, or in any manner whatsoever. [16]

I further certify that after the trustee, pursuant to said Order of April 7, 1939, had sold and disposed of said assets, the Imperial Paper and Color Corporation filed its proof of debt under date of May 9, 1939, in the sum of \$5,415.95, based on four promissory notes executed by the Downey Wallpaper & Paint Co., the bankrupt's alter ego, and asserted priority in its allowance. That objections were filed by the trustee to its allowance, on the ground that said proof of debt did not contain facts sufficient to bring it within the provisions of Section 64-a or 64-b of the Bankruptcy Act of 1898, or Amendments thereto, nor of the Bankruptcy Act of



1938, and Amendments thereto, and that it did not appear on the face of said claim that said claimant claimed a lien on the assets of said bankrupt estate, but that said claim was based on an open account.

I further certify that thereafter the Imperial Paper and Color Corporation filed a petition and obtained an Order to show cause requiring the trustee to show cause, if any there be: why the indebtedness owing to the Imperial Paper and Color Corporation in the sum of \$5,415.95, should not be paid in full before any of the funds derived from the sale of the Downey Wallpaper & Paint Co. assets should be utilized for the benefit of creditors of the bankrupt.

The objections of the trustee to the allowance of the Imperial Paper and Color Corporation claim as a priority claim and the Order to show cause were consolidated for hearing, and both were brought on for hearing at the same time on August 29, 1929, at 10:00 o'clock.

The trustee rested his case, in the first instance, on the ground that there was no assertion of a lien on the assets of the Downey Wallpaper & Paint Co., in favor of the Imperial Paper and Color Corporation, and that there was nothing in said claim which would bring it within the priority provisions of Section 64-a or 64-b, or Section 67-b of the Bankruptcy Act. This made it incumbent [17] upon the petitioner, Imperial Paper and Color Corporation, to make a showing which would entitle it to priority.

In view of the fact that the petition of the Imperial Paper and Color Corporation affirmatively asserted that the Order of April 7, 1939, decreed the Downey Wallpaper & Paint Co., to be the alter ego of the bankrupt, Wilbur J. Downey, the Referee took judicial notice of said Order in this proceeding. The evidence adduced before the Referee showed that for several years prior to the filing of the petition in bankruptcy the bankrupt, Wilbur J. Downey, was heavily indebted to the Standard Coated Products Corporation in a sum in excess of \$100,000.00, an indebtedness which Downey was unable to pay. That said Downey was doing business at 821 South Flower Street, Los Angeles, California, as an individual. He desired to obtain merchandise on credit from the Imperial Paper and Color Corporation for use in his business, but the Imperial Paper and Color Corporation and its officers, knowing of the existence of the heavy indebtedness owing by him to the Standard Coated Products Corporation, declined to sell him its line of merchandise on credit unless he formed a corporation and transferred his business to it.

That on or about June 25, 1936, the bankrupt formed the Downey Wallpaper & Paint Co., a California corporation, and on June 29, 1936, transferred his stock in trade of a value of \$14,194.72 to it, the transfer being made entirely on credit. The officers, directors and stockholders of the Downey Wallpaper & Paint Co., were the bankrupt, his

wife, and his son. The corporation continued to do business at the same address as Downey's individual place of business. The officers and agents of the Imperial Paper and Color Corporation encouraged and advised the bankrupt to form this corporation, with full knowledge of the bankrupt's indebtedness to the Standard Coated Products Corporation, and with reasonable cause to believe, if not actual knowledge that the bankrupt had transferred his business to said corporation with intent to hinder, delay or defraud the Standard [18] Coated Products Corporation in the collection of its indebtedness from him, and extended said corporation credit with such knowledge.

That at the time of the trial of the Order to show cause brought by the trustee against the Downey Wallpaper & Paint Co., and its officers and stockholders in which the Order of April 7, 1939, was entered, the Imperial Paper and Color Corporation was aware of said proceeding then pending, and its attorney, Hiram E. Casey, was present in the courtroom, throughout the trial thereof. No effort was made on the part of the Imperial Paper and Color Corporation to intervene in that proceeding, as a creditor of the Downey Wallpaper & Paint Co.

The undersigned, as Referee, concluded that the Imperial Paper and Color Corporation stood in no better position than it would have had the trustee obtained a judgment against the Downey Wallpaper



& Paint Co., and caused a writ of execution to be levied upon its stock in trade and the same sold under execution sale, inasmuch as it had no lien on the stock.

The Referee also concluded that the Imperial Paper and Color Corporation was a party to Downey's fraud, and that it had no standing in equity to give it a preferred position.

The undersigned Referee concluded that the Imperial Paper and Color Corporation was in no better position than any other creditor of Wilbur J. Downey, and accordingly placed it in the same status as that of a general unsecured creditor.

The question for determination is, whether or not the claim of the Imperial Paper and Color Corporation is one that should be allowed priority over other unsecured creditors of Wilbur J. Downey?

I hand up herewith, for the information of the Judge, the following papers:

1. Priority Claim of Imperial Paper and Color Corporation, a corporation; [19]
2. Trustee's Objections to Allowance of Claim of Imperial Paper and Color Corporation, as prior;
3. Petition for Order to Show Cause on Paul W. Sampsell, Trustee, in re Imperial Paper and Color Corporation;
4. Order to Show Cause on Paul W. Sampsell, in re Imperial Paper and Color Corporation;
5. Original Order dated September 28, 1939, herein sought to be reviewed;

6. Referee's Order of April 7, 1939, including Findings of Fact, Conclusions of Law Decreeing the Downey Wallpaper & Paint Co., *to the* alter ego of Wilbur J. Downey;

7. Petition for Review of Referee's Order on Objections to Allowance of Imperial Paper and Color Corporation's Claim;

8. Petitioner's Exhibit #1.

9. Trustee's Exhibits #1 to #2 inclusive.

10. Reporter's transcript of proceedings on August 29, 1939.

Respectfully submitted, this 16th day of October, 1939.

HUGH L. DICKSON,

Referee in Bankruptcy.

[Endorsed]: Filed Oct. 19, 1939. [20]

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[Title of District Court and Cause.]

PETITION FOR REVIEW OF REFEREE'S  
ORDER ON OBJECTIONS TO ALLOW-  
ANCE OF IMPERIAL PAPER AND  
COLOR CORPORATION'S CLAIM AND  
PETITION.

To the Honorable Hugh L. Dickson, Referee in  
Bankruptcy:

Now Comes the Imperial Paper and Color Cor-  
poration, the claimant and petitioner on a certain  
claim and petition for order to show cause hereto-

fore filed in the above entitled matter with you, and respectfully shows that heretofore your Petitioner filed its verified claim and petition for an order to show cause against Paul W. Sampsell, trustee in the above entitled matter; show cause why the moneys and funds received by the said trustee from the sale or disposition of the assets of the Downey Wall Paper and Paint Company, a corporation, should not be applied first to the payment of the obligations of the Downey Wall Paper and Paint Company and particularly to the obligation of the Imperial Paper and Color Corporation and that the hearing on the said claim and petition having been consolidated for the purpose of trial and coming on regularly for hearing on the 29th day of August, 1939, at which said hearing your petitioner received for its attorney, Hiram E. Casey, and the Respondent Trustee being represented by his attorneys Messrs. Craig, Weller and by Thomas S. Tobin, and that thereafter on about the 28th day of September, 1939, the Honorable Hugh L. Dickson made and entered his order therein and thereon and that thereafter and on or about the 28th day of September, 1939, served upon the attorney for your said Petitioner a copy of the said order and that a copy thereof of said order is hereto attached and made a part hereof.

That the said order of the said Referee is erroneous in [27] this:

That the said order states that the said Petitioner instigated, suggested and induced the Bank-



rupt to form the corporation Downey Wall Paper and Paint Company and to transfer its assets to it as set forth in the said order with the intent express purpose of hindering, delaying and defrauding the creditors of the said Bankrupt; and the said Referee's order in this respect is erroneous as there is no evidence upon which to base the said finding, and that on the contrary the evidence introduced conclusively shows that the said Downey Wall Paper and Paint Company, a corporation, was not formed with any intent or purpose nor did it in any way hinder, delay or defraud the creditors of the said Bankrupt.

The said Order is further erroneous in that the said Order states that your Petitioner dealt with the said Downey Wall Paper and Paint Company with full knowledge of the fraudulent character of the said corporation and did not at any time deal with said corporation or extend to them credit in good faith in a belief that it was an entirely separate and distinct entity from W. J. Downing, an individual; in this as there is no evidence to support the said finding and on the contrary the evidence conclusively shows that your said Petitioner at all times dealt with the said Downey Wall Paper and Paint Company in good faith and extended credit to it in good faith and with the belief based upon information upon which it was justified and entitled to rely, that it was an entirely separate and distinct entity from W. J. Downey and the evidence con-

clusively shows that the said Downey Wall Paper and Paint Company was an entity entirely separate and distinct from the said W. J. Downey; and that the said Referee erred in finding to the contrary; said Referee erred in ordering the Imperial Paper and Color Corporation to take nothing bias of it to show cause directed against the Trustee as the evidence showed conclusively that your Petitioner advanced credit to and dealt with and sold merchandise to the said Downey Wall Paper and Paint Company in due course and in good faith at all times; said referee erred in ordering the claim filed herein [28] by your Petitioner to be disallowed as a prior claim against the fund so held by the Trustee and received by him from the sale of the assets of the Downey Wall Paper and Paint Corporation;

Said Referee erred in ordering that the monies and funds received by the Trustee from the sale or disposition of the assets of the Downey Wall Paper and Paint Company should not be applied first to the payment of the obligations of the Downey Wall Paper and Paint Company, a corporation and that the Imperial Paper and Color Corporation has no right, title or interest in or to said funds or any part thereof other than as a general unsecured creditor of said W. J. Downing.

That the said Referee erred in finding his order herein reviewed in this: that the same is not supported by the evidence as heretofore specified; that

the said Referee erred in making his order herein reviewed in this; that the same is contrary to law and is not supported by the evidence in this case.

Wherefore, your Petitioner feeling aggrieved because of the said order and findings prays that the same may be reviewed; that the said order of the said Referee may be revised and annulled and that an order may be made herein allowing the said claim and petition of your said Petitioner and directing the said Trustee to pay from the funds in his possession received from the sale of the assets of the said Downey Wall Paper and Paint Company, a corporation, a said claim of your Petitioner herein.

Dated at Los Angeles, California, Southern District of California, Central Division, this 5th day of October, 1939.

HIRAM E. CASEY,  
Attorney for Petitioner. [29]

State of California,  
County of Los Angeles.—ss.

Here Hiram E. Casey being by me first duly sworn, deposes and says that he is an attorney for the Petitioner for Review in the above entitled matter; that he has read the foregoing Petition for Review herein and knows the contents thereof and that the same is true of his own knowledge, except as to the matters which are therein stated upon his



information or belief, and as to those matters that he believes it to be true.

That your affiant makes this verification for and on behalf of the said Petitioner for the reason that the said Petitioner is not a resident of the district, nor are any of the officers of the said Petitioner residents of or present in the County of Los Angeles of the State of California and are therefore unable to verify the said Petition.

**HIRAM E. CASEY.**

Subscribed and sworn to before me this 5th day of October, 1939.

**HERTHA N. EBERT,**

Notary Public in and for the County of Los Angeles, State of California. [30]

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[Title of District Court and Cause.]

**ORDER AFTER HEARING ON OBJECTIONS  
TO ALLOWANCE OF CLAIM OF IM-  
PERIAL PAPER AND COLOR CORPORA-  
TION AS A PRIOR CLAIM, AND ON THE  
ORDER TO SHOW CAUSE OF SAID  
IMPERIAL PAPER AND COLOR COR-  
PORATION.**

The Imperial Paper and Color Corporation having filed a claim herein designated "Prior Claim" and the trustee in this matter having filed objections thereto as a prior claim, and the said Imperial

Paper and Color Corporation having secured an order to show cause against the trustee herein directing said trustee to appear and show cause, if any, why the moneys and funds received by him from the sale or disposition of the assets of the Downey Wallpaper & Paint Co., a corporation, should not be applied first to the payment of the obligations of the Downey Wallpaper & Paint Co., and particularly to the obligation of the Imperial Paper and Color Corporation, and both of said matters having been consolidated for the purpose of trial, and the matter having come on for hearing on the 29th day of August, 1939, at 10:00 o'clock, A. M., Messrs. Craig & Weller (Thomas S. Tobin of counsel) appearing as attorneys for the trustee, and Benjamin S. Parks being associated with them for the trial of this particular matter, and Hiram E. Casey appearing as attorney for the Imperial Paper and Color Corporation, and evidence both oral and documentary, having been introduced on behalf of the respective parties, memorandums of points and authorities having been submitted, and it appearing from the evidence adduced herein that the proof of debt filed in this matter by the Imperial Paper and [31] Color Corporation entitled, "Priority Claim of Imperial Paper and Color Corporation, a corporation," does not contain facts sufficient to bring said claim within the provisions of Section 64(a) or (b) of the Bankruptcy Act of 1898, and Amendments hereto, nor the Bankruptcy Act of 1938, and

Amendments thereto; and it also appearing that the indebtedness set forth in said claim was contracted on open account and wholly unsecured, and that said claimant has not and does not claim a lien on the assets of said bankrupt estate; and

It also appearing that the Imperial Paper and Color Corporation, and its officers, agents and representatives were for some time prior to the formation of the Downey Wallpaper & Paint Co., fully informed as to W. J. Downey's indebtedness to the Standard Coated Products Corporation, or its predecessor company, the unpaid balance of which indebtedness is the basis of Standard Coated Products Corporation's claim on file herein, and that with said full knowledge of said indebtedness, and the rights of said Standard Coated Products Corporation as against W. J. Downey, an individual, and his assets, the said Imperial Paper and Color Corporation, through its officers, agents and representatives did instigate, suggest and induce W. J. Downey to form said corporation Downey Wallpaper & Paint Co., and to transfer certain of his assets to it in the manner as aforesaid, with the intent and for the express purpose of hindering, delaying and defrauding the creditors of W. J. Downey, an individual, and particularly his creditor, the Standard Coated Products Corporation, or its predecessor company, the Standard Textile Products Company, and for the further purpose of enabling the said Imperial Paper and Color Corporation to deal with



said W. J. Downey and have him sell said Imperial Paper and Color Corporation's products through said corporation, Downey Wallpaper & Paint Co., all to the benefit of said Imperial Paper and Color Corporation and to the detriment of said Standard Coated Products Corporation.

That after the formation of said corporation Downey [32] Wallpaper & Paint Co., and the fraudulent transfer to it of W. J. Downey's assets, as aforesaid, the said Imperial Paper and Color Corporation did appoint said corporation as its selling agent for its products in this territory, and extended credit to it, the unpaid balance of which is the subject matter of the claim of Imperial Paper and Color Corporation on file herein and herein in controversy; and

It further appearing from the foregoing facts and all of the evidence introduced herein that the said Imperial Paper and Color Corporation has at all times dealt with said Downey Wallpaper & Paint Co., and extended credit to it with full knowledge that it was the alter ego of W. J. Downey, an individual, and with full knowledge of the rights of said Standard Coated Products Corporation in and to the assets of said corporation, and with full knowledge of the fraudulent character of said corporation, and did not at any time deal with said corporation Downey Wallpaper & Paint Co., or extend its credit in good faith, in a belief that it was an entirely separate and distinct entity from W. J. Downey, an individual; and

It further appearing that Imperial Paper and Color Corporation is the only creditor of Downey Wallpaper & Paint Co., a corporation, and it appearing to be the proper case for such an Order,

It Is Hereby Ordered that the Imperial Paper and Color Corporation take nothing by its order to show cause directed against the trustee herein, and that same be dismissed.

It Is Further Ordered that the claim filed herein by the Imperial Paper and Color Corporation entitled "Priority Claim of Imperial Paper and Color Corporation, a corporation," be, and the same hereby is disallowed as a prior claim, but the same is hereby allowed as a general unsecured claim against said bankrupt estate for the principal sum of \$5,415.95,

It Is Further Ordered that the moneys and funds received [33] by the trustee from the sale or disposition of the assets of the Downey Wallpaper & Paint Co., should not be applied first to the payment of the obligations of the Downey Wallpaper & Paint Co., a corporation, and that the Imperial Paper and Color Corporation has no right, title or interest in or to said funds, or any part thereof other than as a general unsecured creditor of said W. J. Downey, Bankrupt.

Done at Los Angeles, in the Southern District of California, this 28 day of September, 1939.

HUGH L. DICKSON,

Referee in Bankruptcy.

Approved as to Form.

**HIRAM E. CASEY,**

Attorneys for Imperial Paper  
and Color Corporation.

[Endorsed]: Filed Oct. 19, 1939. [34]

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**(MINUTE ORDER)**

No. 33121-M. Bkey.

In the Matter of **WILBUR J. DOWNEY**, also  
known as **W. J. DOWNEY**,

**Bankrupt.**

The petition for review is denied, and findings  
and order of the Referee are confirmed.

November 17, 1939. [35]

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[Title of District Court and Cause.]

**NOTICE OF APPEAL TO CIRCUIT COURT  
OF APPEALS, NINTH CIRCUIT.**

Notice Is Hereby Given that the Imperial Paper  
and Color Corporation, the petitioner and claimant  
herein, hereby appeals to the Circuit Court of  
Appeals, for the Ninth Circuit, from the Order of  
the Court herein, dated November 17, 1939, made  
and entered in this action, denying the petition of  
your petitioner and claimant for review, petitioned



for by the Imperial Paper and Color Corporation, from the Order of the Referee herein, dated September 28, 1939, and confirming the findings and order of the Referee thereon.

**HIRAM E. CASEY,**

Attorney for Appellant—Imperial Paper and Color Corporation; 458 South Spring St., Los Angeles, Calif.

[Endorsed]: Filed Dec. 14, 1939. [58]

[Title of District Court and Cause.]

**CLERK'S CERTIFICATE**

I, R. S. Zimmerman, Clerk of the District Court of the United States for the Southern District of California, do hereby certify the foregoing pages, numbered from 1 to 66, inclusive, contain original Citation and full, true and correct copies of the Debtor's Petition; Adjudication and Order of Reference; Priority Claim of Imperial Paper & Color Corporation; Petition for Order to Show Cause; Order to Show Cause; Objections to Allowance of Claim; Referee's Certificate on Review; Petitioner's Exhibit No. 1; Trustee's Exhibit No. 1; Trustee's Exhibit No. 2; Petition for Review of Referee's Order; Order After Hearing on Objections to Allowance of Claim of Imperial Paper & Color Corp.; Minute Order November 17, 1939; Findings of Fact, Conclusions of Law, and Order

Quieting Title to Assets; Notice of Appeal; Petition to Allow Appeal and to fix bond thereon; Order Allowing Appeal and fixing bond; Bond for Costs on Appeal; Assignments of Error; Notice of Appeal to Circuit Court of Appeals; Statement of Points to be relied upon on appeal; Designation of Contents of Record on Appeal; Designation of Additional Portions of Record by Appellee, and Stipulation for Amendment to Designation of Contents of Record on Appeal, which together with original Reporter's Transcript of Testimony transmitted herewith, constitute the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I Do Further Certify that the fees of the Clerk for comparing, correcting and certifying the foregoing record amount to \$9.95, and that said amount has been paid me by the Appellant herein.

Witness my hand and the Seal of the District Court of the United States for the Southern District of California, this 17th day of January, A. D. 1940.

[Seal]

R. S. ZIMMERMAN,

Clerk,

By EDMUND L. SMITH,

Deputy Clerk. [67]

[Title of District Court and Cause.]

TRANSCRIPT OF TESTIMONY OF WILBUR  
J. DOWNEY, THE BANKRUPT, IN RE.  
ORDER TO SHOW CAUSE ON IMPERIAL  
PAPER AND COLOR CORPORATION.

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Los Angeles, California, Tuesday, August 29th, 1939,  
10:00 O'clock A. M.

For the Bankrupt,  
For Paul W. Sampsell,  
Trustee in Bankruptcy,  
Thomas S. Tobin, Esq.,  
817 Board of Trade Building,  
Los Angeles, California.

For Imperial Paper and Color Company,  
Hiram Casey, Esq.,  
535 Rowan Building,  
Los Angeles, California,

For Standard Coated Products,  
Ben S. Parks, Esq.,  
735 Van Nuys Building,  
Los Angeles, California.

Reported by:

JOHN G. MILLER. [71]

The Referee: Wilbur J. Downey.

Mr. Tobin: I think we will put on some evidence.

I will call Mr. Downey to the stand.

The Referee: All right, proceed.



**WILBUR J. DOWNEY,**

called as a witness, having been first duly sworn,  
deposed, and testified as follows:

**Direct Examination**

By Mr. Tobin:

Q. Your name is Wilbur J. Downey?

A. Yes.

Q. And you are the Bankrupt in this proceeding?

A. Yes.

Q. You were, likewise, the president of the Downey Wallpaper and Paint Company?

A. Yes, sir.

Q. You owned how much of the stock in that corporation—No, I will put it this way: The stock in that corporation was held entirely by yourself, your wife and son, was it not?

A. Yes.

Q. And you had, practically, full charge of the [72] management of both companies, did you not?

A. Yes.

Q. Your own business and the business of the Downey Wallpaper and Paint Company?

A. Yes.

Q. When was the Downey Wallpaper and Paint Company organized?

A. July 1, 1936.

Q. And at that time, you were indebted to the Standard Coated Products Company in the sum of—in a sum in excess of \$100,000.00?

A. Yes, sir.

Q. About \$108,000.00?

A. Yes, sir.

(Testimony of Wilbur J. Downey.)

Q. And your sole assets consisted of the stock in trade, in your own name, and of the value of about \$14,000.00? A. Yes.

Q. And that was all you had to pay of this indebtedness to the Standard Coated Products?

A. Yes, sir.

Q. Prior to the organization of the Downey Wallpaper and Paint Company, you went back to New York and conferred with the president of the Imperial Color and Paper Corporation?

A. Yes.

Q. And that was at Glenn Falls, New York—in April, [73] 1936? A. Yes.

Q. And you conferred with him at that time in regard to the amount that you owed the Standard Coated Products?

A. Well, he was familiar with it, but I only conferred with him concerning the idea of getting his line.

Q. And he was aware of it? A. Yes.

Q. And the suggestion was made by him, was it not, that you were to organize a corporation?

A. He made three suggestions—either to form a corporation, or go into bankruptcy, or get the Standard Coated Products Company to reduce the indebtedness to a decent figure.

Q. What did he say was the reason, among other things, to incorporate?

A. So that there would be a unity to deal with, that would be free from my personal indebtedness.

(Testimony of Wilbur J. Downey.)

Q. And so that the stock in trade could not be reached by the Standard Company?

A. There was nothing discussed about that.

Q. Well, that was because—

Mr. Casey: I object to that—

The Referee: Yes, it calls for a conclusion. Just tell us what was said.

Mr. Tobin: Q. After you organized the corporation, you [74] transferred all of your stock—all of your own stock—to it, did you not?

A. No; a great part of it, yes.

Q. \$14,000.00 worth? A. Yes.

Q. And you did it on credit? A. Yes.

Q. You took a promissory note? A. Yes.

Q. And that was never paid?

A. \$5000.00 was paid, in cash.

Q. And on the date of filing the petition in bankruptcy, you still owed \$5000.00 on that promissory note? A. Yes.

Q. That is, from your corporation to yourself?

A. Yes.

Q. And you still owe the greater part of the indebtedness to the Standard Coated Company?

A. Yes.

Q. And you had nothing but five shares of stock in your own name out of which the Standard Coated Company could collect that claim? A. Yes.

Q. Your wife had several hundred shares, did she not, at the same time?



(Testimony of Wilbur J. Downey.)

A. She had a greater portion; I don't remember the [75] exact figures.

Q. At your conference at Glenn Falls, New York, to whom did you talk, with the Imperial Paper and Color Company?

A. With all of their officials—Mr. Anderson, their president, treasurer and sales manager.

Q. Now, this corporation that was to be formed was to be free of indebtedness, was it not?

A. We didn't discuss any of the details of the formation of the corporation while we were at Glenn Falls, and the Imperial Paper and Color Company wasn't aware of any arrangement; they merely suggested that should be done.

Q. Now, just to refresh your recollection, I wish to have you examine the transcript of your testimony on March 15, 1939, on the question of alter ego, and will ask you if you didn't give the following answers to the following questions:

"Q. Whom did you talk to in Glenn Falls, New York, of the Imperial Paper and Color Company?

"A. I talked to the president, the treasurer, the sales manager, and half a dozen other officers.

"Q. Who was the president?

"A. Mr. McBride.

"Q. What were the names of the other officers?

(Testimony of Wilbur J. Downey.)

"A. Mr. Piersol was the treasurer, and Mr. Morrison was the sales manager. [76]

"Q. What did you say to them, and they to you, with regard to the second alternative, the formation of the corporation?

"A. Mr. McBride, himself, suggested that it might be advisable for me to form a separate corporation which would be free of indebtedness, and employ me to sell their line of wallpaper.

"Q. And also free of assets? A. Yes.

"Q. You were to form a corporation and have no assets?

"A. Yes; they were selling me on my personal reputation.

"Q. And did they tell you on what basis they would extend credit to you?

"A. They would extend no credit, unless this obligation to the Standard people was settled".

Q. Did you so testify?

A. Yes, I presume so.

Q. Was that correct? A. Yes.

Q. Now, then, on Page 23, did you testify, in response to questions as follows:

"Q. What was said about wallpaper to this corporation?

"A. They advised me that that might be purchased from the new corporation.

(Testimony of Wilbur J. Downey.)

"Q. From you? [77] A. Yes.

"Q. And did they advise you it would be purchased? A. Yes.

"Q. How?

"A. To be paid for as rapidly as possible.

"Q. Yes; part on a promisory note, and the sales made by you to this corporation, on credit?

"A. Yes, sir.

"Q. Who was it that advised that, in connection with the Imperial Paper and Color Company?

"A. The president, Mr. McBride.

"Q. And what did you tell him?

"A. I told him my best plan was not to form a corporation, but to get a reduction in my indebtedness, because there was no idea in my mind at that time to form a new corporation".

Q. Did you so testify? A. Yes, sir.

Q. You say there was no idea in your mind at that time to form a new corporation?

A. The meaning of that is, I had no idea of forming a corporation when I was in Glenn Falls.

Q. And the suggestion came from the Imperial Paper and Color Company? A. Yes.

"Q. Well, we are only interested in the corporation, [78] itself—Read the question. (Question read.)



(Testimony of Wilbur J. Downey.)

"Q. The question is this: Did you tell him that you would do that, if you were unable to get the indebtedness reduced?

"A. Not at that time, no.

"Q. When did you do that?

"A. By correspondence, after I received this refusal on the part of the Standard Company".

Q. Did you so testify? A. Yes, sir.

"Q. You are referring now to the telegram of June 15th, in which the Standard told you it was impossible to accept the proposition outlined by your letter? A. Yes, sir.

"Q. Then, after you had received this definite refusal from the Standard people, did you communicate that fact to the Imperial Paper and Color Company? A. Yes.

"Q. By letter. A. Yes.

"Q. And have you a copy of that letter?

"A. I think so.

"Q. May I see it.

"A. I haven't it with me.

"Q. Well, weren't you directed to bring up here at this time the correspondence had with the Imperial Wallpaper [79] and Color Company? A. No, sir.

"Q. In any event, you communicated with the Imperial Color and Paper Company?

"A. Yes, sir.

(Testimony of Wilbur J. Downey.)

"Q. And ten days later, you formed this corporation? A. Yes, sir.

"Q. Then, did you write to the Imperial and tell them you had formed this corporation?

"A. Yes.

"Q. And did you tell them that you had transferred your wallpaper business to the corporation? A. Yes, that I had sold it.

"Q. And did you tell them that you had made the entire sale on credit? A. Yes".

Q. Did you so answer?

Mr. Casey: As far as the effect against us is concerned, that is incompetent, irrelevant and immaterial, and a conclusion of the witness. The best evidence would be the letters he wrote. I don't think that is a fact. He is asking questions of an impeaching nature, but as to the evidence, we object to that as not binding upon us.

The Referee: Is this witness the claimant?

Mr. Casey: No, he is the Bankrupt; the claimant is the Imperial Paper and Color Company. [80]

The Referee: And he was the president of the Imperial Paper and Color Company?

Mr. Tobin: No, of the Downey Wallpaper and Paint Company.

The Referee: And he and his wife and son owned all of the stock of the other corporation?

Mr. Tobin: Yes, Your Honor.

Mr. Casey: That is a conclusion of Mr. Tobin;

(Testimony of Wilbur J. Downey.)

the corporation was formed under the advice of their counsel, Mr. Hutton.

The Referee: Well, he says this testimony is correct, that it was suggested to him by the man back in New York.

Mr. Casey: He says, discussed.

Mr. Tobin: Well, it was suggested.

Mr. Casey: The contents of the letter can be produced, and I object to it.

The Referee: He has already testified, and it is in the record.

Mr. Tobin: Q. Well, Mr. Downey, did you in any way communicate with the Imperial Paper and Color Company, informing them that you had transferred the business of W. J. Downey to the Downey Wallpaper and Paint Company? A. Yes, sir.

Q. And did you in any way communicate to them the fact that you had—

Mr. Casey: I object to any contents of any written communication. [81]

The Referee: Well, isn't it in the possession of this man, Mr. Casey?

Mr. Casey: No, Your Honor, it is in my possession.

The Referee: Then, you should deliver it to this man.

Mr. Casey: Here is the letter. Mr. Hutton wrote the letters to the Imperial Paper and Color Company on your behalf, did he not?

The Witness: Yes.



(Testimony of Wilbur J. Downey.)

Mr. Casey: I hand you a letter of June 17, 1938, and I also hand you the letter of June 24th; they go together; the notations, there, are just office annotations?

The Witness: Yes, sir.

Mr. Tobin: There is no question about the authenticity of this letter, Mr. Casey?

Mr. Casey: No.

Mr. Tobin: We want to offer it in evidence.

The Referee: Well, let Mr. Downey see it. It is a fact, Mr. Downey, that Mr. Hutton was acting as your attorney?

The Witness: Yes, Your Honor.

The Referee: And as your agent in these negotiations?

The Witness: Yes, sir.

The Referee: And you authorized him to act for you?

The Witness: Yes.

Mr. Tobin: If Your Honor please, I would like to offer this letter of June 24th in evidence, as our next exhibit. [82]

The Referee: Yes, the first one will be Exhibit No. 20.

The Clerk: Yes, the next in order will be Exhibit No. 21.

Mr. Casey: We have no "18" or "19".

The Clerk: There are nineteen exhibits introduced.

(Testimony of Wilbur J. Downey.)

Mr. Tobin: This is a separate exhibit, and this will be Exhibit No. 1, and this (indicating) will be Exhibit No. 2, and it says: "It must be kept in mind that Mr. Downey's only creditor is the Standard Textile Company; that his credit rating is excellent in the local field, and that the only entity that could possibly take exception to this new transaction is the Standard Company, but if any exception is taken to it, it simply means that they will be biting off their nose to spite their face, and the psychology is all in favor of a successful conclusion".

Mr. Parks: That Standard Coated is only a change of name.

(TRUSTEE'S EXB. #1)

[Letter Head of Frank S. Hutton]

June 17, 1936

Imperial Paper and Color Corporation  
Glens Falls, New York

Gentlemen:

Your letter of June 2nd to W. J. Downey has been referred to me for answer.

In reply I beg to advise you that I am now organizing a corporation with a capital of \$15,000.00, with W. J. Downey, David Downey and Mildred Downey (wife of W. J. Downey) as incorporators. The stock will be issued one-third to each. W. J. Downey proposes to sell all of his stock of wall

(Testimony of Wilbur J. Downey.)

paper and paint to the new corporation, agreeing to carry the account for six months. By this arrangement the new company will have adequate working capital and in six months' time be functioning without assistance from W. J. Downey, personally. Of course the incorporators will pay for any stock issued to them.

From a practical standpoint it is imperative for Downey as well as yourselves that the matter of representation of your line be definitely determined, as you no doubt have observed that in building permits Los Angeles is second only to New York and the golden harvest is yet to be reaped.

Having in mind the financial status of both Mr. Downey and the Standard Textile, every care will be exercised to protect the new corporation from becoming involved with either, and you [22] may rest assured that the interest of your Company will likewise be cared for.

Mr. Downey's plan of reorganization was turned down by the Standard, probably due to the fact that the Standard was itself going through the throes of reorganization, but we have not given up hope that within a short time a practical solution will present itself. In the meantime, we are going forward with our plan as outlined, and by the time you receive this letter will be functioning full blast as the Downey Wall Paper and Paint Co.

Yours very truly,

FSH:L.

FRANK S. HUTTON. [23]



(Testimony of Wilbur J. Downey.)

(TRUSTEE'S EXB. #2)

[Letter Head of Frank S. Hutton]

June 24, 1936

Imperial Paper and Color Corporation  
Glens Falls, New York

Gentlemen:

In reply to your letter of June 22nd addressed to Mr. W. J. Downey, I beg to advise you that the business of W. J. Downey will continue as it has continued up to the present time, and he will be engaged in the sale of Sanitas, table oil cloth and leather cloth under his contract with the Standard Textile Company. In other words, there will be no change in his relations with the Standard Textile Company, except that the portion of the business he is now carrying on in wall paper and paint will be sold to the new corporation.

The money paid into the new Company will be money not in any way effected by the Standard contract. Any money that would by the terms of the Standard contract be payable to the Standard Company will of course not be diverted to the new Company, and the new financing will be effected through loans upon which W. J. Downey and the other incorporators may or may not be personally obligated.

The new set-up will not affect the old set-up in any way, as the new Company will function en-

(Testimony of Wilbur J. Downey.)

tirely independent of W. J. Downey and the only connection will be that it will be a tenant of W. J. Downey at 821 South Flower Street. Its stock will be kept [24] separate and distinct; it will have its own business staff, and its capital will not be directly or indirectly involved in the Standard Textile Company's arrangements with W. J. Downey.

The stock of wall paper and paint will be purchased by the new company from W. J. Downey at inventory. None of this stock in trade came from the Standard and it has no interest therein. Under the plans, the new company will have six months within which to pay the account.

The salaries under the Standard contract will remain the same and there will be no additional executive salaries to carry on the new company, as its incorporators propose to forego salaries until the new company is firmly on its feet. There will of course be salaries paid to salesmen and employees, but these will be kept down to a minimum.

There will be a rent charge to the new company, but as a tenant of W. J. Downey it will of course have the use of part of the fixtures. The chattel mortgage will not affect this arrangement.

The accounts receivable of W. J. Downey will remain the property of W. J. Downey and be accounted for by him under his contract with the Standard Textile Company.

(Testimony of Wilbur J. Downey.)

By the organization of the new company W. J. Downey is not terminating his individual business as heretofore conducted, except as to wall paper and paint, and he will continue to function as before until such a time as a satisfactory settlement can be made with the Standard Textile Company, which, if not accomplished within the next year, will compel him to resort to some honorable means to rid himself of the unendurable load he is now carrying.

As the picture is now presented, we feel that within six months the new company will have paid W. J. Downey for all stock purchased and be firmly established, to the point that it will probably pay Mr. Downey to give the Standard Company an ultimatum [25] of either reaching an agreement with him or of his surrendering his agency; but, in any event, every precaution will be taken in a legal way to prevent the new company from becoming involved with W. J. Downey personally or with the Standard company.

It must be kept in mind that Mr. Downey's only creditor is the Standard Textile Company; that his credit rating is excellent in the local field, and that the only entity that could possibly take exception to this new transaction is the Standard Company, but if any exception is taken to it, it simply means that they will be biting off their nose to spite their face, and the psychology is all in favor of a successful conclusion.



(Testimony of Wilbur J. Downey.)

Mr. Downey will be at my office at 10:00 A.M. Pacific Standard Time on Friday, June 26th, so please call him at my office, TRinity 5396, Los Angeles, at that time.

Yours very truly,

(s) FRANK S. HUTTON.

FSH:L

Encl.

(via Air Mail)

[Endorsed]: Filed Oct. 19, 1939. [26]

### Cross Examination

By Mr. Casey:

Q. Mr. Downey, Mr. Frank S. Hutton was your attorney about the time of the formation of this corporation? A. Yes.

Q. And the matter of extricating you from the situation in which you found yourself was the matter which you were discussing, both with the Imperial Color Company and the Standard Textile Company, and Mr. Hutton and Mr. Parks—is that correct? [83]

Mr. Parks: Not at that time.

Mr. Casey: Well, I am asking him.

The Witness: I was discussing it with Mr. Hutton, and the Standard Company.

Mr. Casey: Q. Did you ever go back to the Standard Textile Company's office in the east?

A. Yes, sir, several times.

(Testimony of Wilbur J. Downey.)

Q. And before you formed this corporation, did you discuss the matter of organizing a corporation with any one connected with the Standard Textile Company? A. Yes.

Q. And did you advise them of your intention to do so? A. Yes.

Q. And right about—or up to the time that you did form it—Is that correct? A. Yes.

Q. At the time—or prior to the formation of the corporation, you prepared and signed, or had prepared and signed and acknowledged, and had prepared and recorded, an intention to sell property? A. Yes.

Mr. Parks: That is already in evidence.

Mr. Casey: Well, we will offer it as the original.

The Referee: All right; Claimant's Exhibit #1.

#### (PETITIONER'S EXB. #1)

#### NOTICE OF SALE OF PERSONAL PROPERTY

Notice is hereby given that on Monday, July 28, 1936, at the hour of 10:00 o'clock A.M., the undersigned, doing business as W. J. Downey, at 821 South Flower Street, in the City of Los Angeles, State of California, will transfer all of his right, title and interest in the stock in trade of wall paper and paints, to Downey Wall Paper and Paint Co., a corporation, in consideration of the transfer to the undersigned of the sum of Seventy Five Hundred Dollars (\$7500.00), represented by a promissory note executed by the said Downey Wall Paper

(Testimony of Wilbur J. Downey.)  
and Paint Co., payable six months from date. The  
consideration will pass at said time at 725 Citizens  
National Bank Building, Los Angeles, California.

Dated July 20, 1936.

(s) W. J. DOWNEY.  
(W. J. Downey)

State of California,  
County of Los Angeles—ss.

On this 20th day of July, 1936, before me, Frank  
S. Hutton, a Notary Public, in and for the County  
of Los Angeles, State of California, residing there-  
in, duly commissioned and sworn, personally ap-  
peared W. J. Downey, personally known to me to  
be the person whose name is subscribed to the with-  
in instrument, and acknowledged to me that he  
executed the same. In witness whereof I have  
hereunto set my hand and affixed my official seal  
in said County the day and year in this certificate  
first above written.

(s) FRANK S. HUTTON,  
Notary Public in and for the County of Los An-  
geles, State of California.

[Endorsed]: Book 14276, Page 156, Official Rec-  
ords. #1174. Copy of Original recorded at request  
of Vendee July 21, 1936. 4:36 P.M. Copyist #103.

\$1.00—3—S.

Compared C. L. Logan, County Recorder. B. R.  
Patton (92) Deputy. [21]



(Testimony of Wilbur J. Downey.)

Mr. Casey: Q. I will ask you, Mr. Downey, if it isn't a fact that you were told, both by Mr. Anderson, of the [84] Imperial Paper and Color Company, and by Mr. Piersol, of the Imperial Paper and Color Company, and by Mr. McBride, that you, individually, were not in position so that they could give you any credit? A. Yes.

Q. And that if you expected to handle their line, you would have to make financial arrangements so that they would be dealing with some one upon whom they could rely to collect the money for the merchandise delivered to you? A. Yes, sir.

Q. And did you advise the Standard Textile people to that same effect?

A. The same thing.

Q. And was anything done by any one on your behalf to conceal the fact that you intended to form the corporation?

A. No, not at all; I wrote to the Standard Company, very frankly, and told them.

The Referee: I suppose the letter should be in evidence.

The Witness: That letter is already in evidence.

Mr. Casey: We better re-introduce it, then; he says it is in evidence—If I have a copy of it.

Q. In other words, you wrote a letter to the Standard Textile Company, informing them of your plan? A. Yes.

Q. That was before the corporation was formed?

(Testimony of Wilbur J. Downey.)

A. After it was formed, Mr. Casey. [85]

Q. Well, was it in 1938 or 1936?

Mr. Tobin: That is objected to—

Mr. Casey: Q. That would be the summer of 1936?

Mr. Tobin: That is objected to as immaterial, if it were after the corporation was formed, after he had done it all.

The Referee: Yes.

Mr. Casey: Mr. Parks, did you have the letter of May 27, 1936?

Mr. Parks: It is in evidence, here; yes, here it is; that is a photostat of it; this letter of May 27th doesn't refer to the corporation.

Mr. Casey: Well, I notice it doesn't.

The Referee: How much cash, if any, was paid when you transferred your \$14,000.00 worth of assets to this new corporation?

The Witness: We subscribed \$500.00 for the stock.

The Referee: Was that actually paid in money?

The Witness: Yes, in money, your Honor.

Mr. Tobin: I don't think that is responsive to the Court's question. It was sold entirely on credit.

The Referee: How much did you get in payment at the time of the transfer?

The Witness: Nothing, your Honor; the corporation wrote a note; subsequently, we paid \$5000.00 cash against that note. [86]

(Testimony of Wilbur J. Downey.)

Mr. Casey: Q. Mr. Downey, after the corporation was formed, in July, 1937—

A. 1936.

Q. At the time it was formed, there was a complete segregation of your business, individually, and the business of the corporation—Is that correct? A. Entirely separate, yes.

Q. And the property bought by the corporation was kept, kept and accounted for by the corporation?

A. Entirely separate from everything else.

Q. How much business did the corporation do in those two years?

A. Well, our business with the Imperial Paper and Color Company was about \$22,000.00, or \$23,000.00, in purchases in a year.

Q. And in the course of a year and a half, it would average about the same? A. Yes.

Q. Did you buy from other people, as well as the Imperial Paper and Color Company at that time? A. Yes, but not wallpaper.

Q. But the Downey Corporation bought from many other people? A. Yes, many others.

Q. Can you estimate how much your annual business with the corporation was? [87]

A. About \$65,000.00.

Q. And the other creditors of the Downey Wallpaper and Paint Company had been paid, except the Imperial Paper and Color Company?



(Testimony of Wilbur J. Downey.)

A. Everything has been paid except the Imperial Company.

Q. Isn't it a fact that the assets that were taken by Mr. Sampsell, as Trustee, from the corporation, were not the identical assets that you turned over to it in July, 1936?

A. There were no assets turned over to Mr. Sampsell that were assets in 1936.

Q. So, whatever assets the corporation did receive from you in 1936 had been disposed of in due course of events?

A. Yes.

Mr. Casey: I think that is all.

Redirect Examination

By Mr. Tobin:

Q. Was all of the merchandise that was in possession of the Downey Wallpaper and Paint Company, merchandise that had been purchased from the Imperial Paper and Color Company?

A. All of the wallpaper. [88]

Q. And what about the rest of the merchandise?

A. The rest was paint, bought from a dozen different concerns.

Q. So, there was merchandise bought from this co-mingling of the Downey Wallpaper and Paint Company?

A. It wasn't co-mingled.

Q. But it was in the assets of the corporation?

A. Yes, sir.

(Testimony of Wilbur J. Downey.)

Q. So, the assets that were sold by the Downey Wallpaper and Paint Company do not constitute the only merchandise? A. No.

Q. And the merchandise that was disposed of by the Downey Wallpaper and Paint Company was disposed of and used in connection with the business—is that right? A. Yes.

Q. And isn't it a fact that the Imperial Paper and Color Company remanded its contract before you went into bankruptcy? A. Yes.

Q. How long before?

A. In the Fall of 1938.

Q. Did they tell you the reason?

A. Yes; they said I had to raise at least \$18000.00 capital to put into the business before they could continue to sell me and do the job they wanted to do in Southern [89] California, and it wasn't possible for me to raise that money.

Q. They knew—What date was that?

A. Well, it was the Fall of 1938.

Q. They knew, as early as the Fall of 1938, that your corporation was uncapitalized? A. Yes.

Q. And isn't it a fact that right at that time there was litigation threatened by the Standard Coated Products? A. No, sir.

Q. There wasn't any threat?

A. I never had any threat from them at any time.

Q. And they did that without any warning?

(Testimony of Wilbur J. Downey.)

A. Yes, sir.

Q. And isn't it a fact that at the time you advised the Standard Company of the formation of this corporation, that they refused to accept this proposition?

A. Yes, because of their own internal trouble.

Mr. Casey: They were under 77-B?

The Witness: Yes.

Mr. Tobin: Q. They refused to accede to your transfer to this corporation?

Mr. Casey: That is objected to as immaterial.

The Witness: They never--They never objected to it.

Mr. Tobin: I would like to find out if they ever, in any way, consented to it, or acceded. [90]

Mr. Casey: He said they never objected.

The Referee: Well, what did they do? Did they tell you it was O. K., or N. G.?

The Witness: No, they didn't say anything.

Mr. Tobin: Q. Isn't it a fact that as far back as June 15, 1936, they wired you that it was impossible to accept the proposition outlined in your letter of May 27th, signed by J. T. Broadbent?

Mr. Casey: I object to that, unless you have that letter; and if you have that letter--the letter of the 27th doesn't mention anything about a corporation, as I recall it; it is a reduction to \$25,000.00, and something else, but nothing about a corporation, is it?



(Testimony of Wilbur J. Downey.)

Mr. Parks: I have other correspondence at the office, in which Major Hutton wrote back, and was advised that the corporation hadn't been formed. If Your Honor wants to take a recess, I can get it this afternoon.

Mr. Tobin: That doesn't refer to a reduction.

Q. At the time you formed this corporation, you were endeavoring to get the Standard Company to reduce their claim from \$100,000.00 down to \$25,000.00?

A. I had been trying for two years to get them to reduce it.

Q. And they had flatly refused, all the way through? A. Yes.

Q. And what did you say to them at that time?

[91]

A. I said I was on my way to New York, to interview the Standard Company, to discuss this proposed plan.

Q. As a matter of fact, hadn't there been, more or less, a plan agreed upon, and you wanted to find out whether the Imperial Company had approved it?

A. Oh, no; I wouldn't approve any plan without their approval, because they had extended me so much credit.

Q. So you went there and discussed the whole matter with them? A. I think I did.

Q. And shortly after that, they terminated your agency agreement, didn't they? A. Yes, sir.

Mr. Tobin: That is all.

-(Testimony of Wilbur J. Downey.)

Recross Examination

By Mr. Casey:

Q. Isn't it a fact that they terminated your agency agreement because you couldn't meet your obligations, which were overdue?

A. Well, they looked into the whole matter, and then found out that I had no more capital, and insisted on my raising more money, which I couldn't do.

Q. And you told them that? A. Yes. [92]

Q. And it was because you couldn't raise the money——

A. Yes, it was because I was unable to capitalize to suit them that they wouldn't give me the agency.

Q. And they told you that you shouldn't form a new business? A. Yes.

Q. And did they give you an opportunity to do that? A. Yes, I think three months.

Q. And then, after that, you advised them that you were unable to procure the capital for the business? A. Yes, sir.

Redirect Examination

By Mr. Tobin:

Q. Among other things, I assume you told them about your inability to procure the capital for the business, and that that was unpaid to the extent of \$9000.00 or more? A. Well, I——

Mr. Casey: That is objected to as incompetent, irrelevant and immaterial.

(Testimony of Wilbur J. Downey.)

The Referee: Well, gentlemen, submit your authorities.

Mr. Casey: Yes, I think so; there is a nice question of law there.

Mr. Tobin: I have my original brief here, now, and I [93] will submit it, and give Mr. Casey a copy of it.

Mr. Casey: I am arranging for my vacation, and if I might have until the fifteenth of September, Your Honor.

Mr. Tobin: I doubt very seriously if there is any more brief. He wants until the fifteenth of September.

The Referee: All right, make it the 15th of September. I will tell you, frankly, the thing that intrigues me most is the element of good faith. Does anyone object to our releasing this photograph? It is to show the continuity of the business. [94]

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State of California,  
County of Los Angeles—ss.

I, John G. Miller, Official Court Reporter for the Honorable Hugh L. Dickson, Referee in Bankruptcy, do hereby certify that on Tuesday, August 29, 1939, at 10:00 o'clock A. M., I reported the Matter of Wilbur J. Downey, Bankrupt, in re. Order to Show Cause on Imperial Paper and Color Corporation; that the foregoing twenty-four pages are



a full, true and accurate transcript of my shorthand notes in said proceeding.

In Witness Whereof, I have hereunto set my hand this sixteenth day of October, 1939.

**JOHN G. MILLER,**

Official Court Reporter.

[Endorsed]: Filed Oct. 19, 1939. [95]

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[Endorsed]: No. 9422. United States Circuit Court of Appeals for the Ninth Circuit. Imperial Paper & Color Corporation, Appellant, vs. Paul W. Sampsell, Trustee of Wilbur J. Downey, also known as W. J. Downey, Bankrupt, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Southern District of California, Central Division.

Filed January 17, 1940.

**PAUL P. O'BRIEN,**

Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 9422

IMPERIAL PAPER AND COLOR CORPORA-  
TION,

Appellant,

vs.

PAUL W. SAMPSELL,

Appellee.

STATEMENT OF POINTS TO BE RELIED  
UPON ON APPEAL.

Now comes the Imperial Paper and Color Corporation having filed an appeal to the Circuit Court of Appeals, for the Ninth Circuit, from the Order of the Court herein on November 17, 1939, and herewith, pursuant to Rule 19, Section 6 thereof, of the Rules of Practice of United States Circuit Court of Appeals for the Ninth Circuit, designates the points upon which it intends to rely on the appeal herein:

1. That the Court erred in denying the Petition for Review.

2. That the Court erred in confirming the findings of the Order of the Referee.

3. That the Order of the said Referee so confirmed is erroneous in ordering that the moneys and funds received by the Trustee from the sale or disposition of the assets of the Downey Wall Paper and Paint Company should not be applied first to

the [97] payment of the obligations of the Downey Wall Paper and Paint Company, a corporation, and that the Imperial Paper and Color Corporation has no right, title and interest in or to said funds or any part thereof, other than as a general unsecured creditor of W. J. Downey, the Bankrupt.

4. That said Order of the Referee is erroneous in that it states that the said Appellant dealt with the said Downey Wall Paper and Paint Company with full knowledge of the fraudulent character of the said corporation, and did not at any time deal with the said corporation, nor extend to it credit in good faith, in the belief that it was an entirely separate and distinct entity from W. J. Downey, an individual.

5. That said Order of the said Referee so confirmed is erroneous in this, that there is no evidence to support said finding, and upon the further ground that there is no issue raised from pleadings herein that justifies any finding thereon.

6. That said Order of the said Referee so confirmed by the said Court is erroneous in this:

That the said Order states that he said petitioner instigated and suggested and induced the Bankrupt to form the corporation of Downey Wall Paper and Paint Company, and to transfer its assets, as set forth in said Order, with the intent and express purpose of hindering, delaying and defrauding the creditor of the said Bankrupt; in this:

That there is no evidence upon which to base the said finding, and upon the further ground that there



is no issue raised by the pleadings to justify such a finding.

7. That said Order of the said referee so confirmed by the said Court is erroneous in this:

That it failed and refused to find that Section 64-a or Section 64b of the Bankruptcy Act of 1898 and the Amendments thereto, is not applicable herein, and that objections [98] filed by the Trustee herein were not well taken, and that by the objections so filed, the claim of the said Appellant herein and the facts herein set forth were admitted.

8. That the Order of the said Referee so confirmed by the said Court is erroneous in this:

That the same is contrary to law and is not supported by the evidence in the said proceeding.

**HIRAM E. CASEY**

Attorney for Appellant. [99]

Service of the within Statement of Points to be Relied Upon on Appeal is hereby admitted this 16 day of January, 1940.

**CRAIG and WELLER**

By **THOS S. TOBIN**

**C R**

Attorneys for Appellee.

[Endorsed]: Filed Jan. 17, 1940. Paul P. O'Brien, Clerk. [100]

[Title of Circuit Court of Appeals and Cause.]

DESIGNATION OF CONTENTS  
OF RECORD ON APPEAL.

Now comes the Imperial Paper and Color Corporation, Appellant herein, having filed an appeal to the United States Circuit Court of Appeals for the Ninth Circuit herein, and herewith designates the portion of the records and proceedings and evidence to be contained in the record on appeal herein, pursuant to Rule 19 Section 6 of the Rules of Practice of United States Circuit Court of Appeals for the Ninth Circuit, said designation herein referred to, being as follows, to-wit

1. Claim of Imperial Paper and Color Corporation.

2. Petition for Order to Show Cause on Paul W. Sampsell, Trustee, in re: Imperial Paper and Color Corporation.

3. Trustee's Objections to Allowance of Claim.

4. Petition for Review of Referee's Order.

5. Exhibits:

(a) Petitioner's Exhibit #1 [101]

(b) Trustee's Exhibit #1 and #2.

6. Reporter's Transcript.

7. Minute Order of Court, dated November 17, 1939.

8. Notice of Appeal to Ninth Circuit.

9. Designation of Points on Appeal.

10. Designation of Contents of Record on Appeal.

11. Referee's Certificate on Review.

12. Voluntary Petition for Bankruptcy of above  
Named Bankrupt.

13. Adjudication of Bankrupt.

14. Order of Reference to Referee Dickson.

The Appellant further designates and requests that the portions of the foregoing documents referred to, containing and setting forth the title of the Court and the cause, be omitted from the said papers, save and excepting the Petition for Order to Show Cause on Paul W. Sampsell, Trustee, designated as Item No. "2." hereinabove.

HIRAM E. CASEY,

Attorney for Appellant. [102]

Service of the within Designation of Contents of Record on Appeal is hereby admitted this 16 day of January, 1940.

CRAIG and WELLER

By THOS. S. TOBIN

C R

Attorneys for Appellee.

[Endorsed]: Filed Jan. 17, 1940. Paul P.  
O'Brien, Clerk. [103]



No. 9422

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IN THE

**United States Circuit Court of Appeals**

**For the Ninth Circuit**

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**IMPERIAL PAPER & COLOR CORPORATION,**  
Appellant,

vs.

**PAUL W. SAMPSELL, Trustee of Wilbur J.  
Downey, also known as W. J. Downey, Bankrupt,**  
Appellee.

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**Upon Appeal from the District Court of the United  
States for the Southern District of California,  
Central Division**

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**PROCEEDINGS HAD IN THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE NINTH CIRCUIT.**

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United States Circuit Court of Appeals for the  
Ninth Circuit

Excerpt from Proceedings of Wednesday, May 1,  
1940.

Before: Wilbur, Denman, and Mathews, Circuit  
Judges.

ORDER DENYING MOTION TO DISMISS  
AND SUBMITTING CAUSE

Ordered motion of appellee to dismiss appeal  
denied.

Further ordered cause on merits argued by Mr.  
Hiram E. Casey, counsel for appellant, and by Mr.  
Thomas S. Tobin counsel for appellee, and sub-  
mitted to the court for consideration and decision,  
with leave to appellee to file certified copy of order  
of referee in bankruptcy of April 7, 1939, and  
pleadings on which order was based, Mr. Casey ob-  
jecting thereto.



In the District Court of the United States, Southern  
District of California, Central Division

In Bankruptcy No. 33121-M

In the Matter of

WILBUR J. DOWNEY, also known as W. J.  
DOWNEY,

Bankrupt.

### ORDER TO SHOW CAUSE.

Upon reading and filing the verified petition of Paul W. Sampsell, Trustee in Bankruptcy herein, and good cause therefor appearing,

Now on motion of Messrs. Craig & Weller (Thomas S. Tobin of counsel), Attorneys for the trustee, it is

Ordered that the Downey Wallpaper & Paint Co., a corporation, Wilbur J. Downey, Mildred Downey and David Downey, its officers, directors and sole and only stockholders, show cause before the undersigned Referee in Bankruptcy at his Court Room in the H. W. Hellman Building, Los Angeles, California, on the 12th day of January, 1939, at the hour of 10:00 o'clock, A. M., on said date, or as soon thereafter as counsel can be heard, why the prayer of the trustee's petition should not be granted, and why the Downey Wallpaper & Paint Co., a corporation, should not be decreed to be the alter ego of the bankrupt, Wilbur J. Downey, and its assets marshalled for the benefit of creditors of the bankrupt estate and so administered by said

trustee, and why all the relief prayed for in the trustee's petition should not be granted.

Done at Los Angeles, in the Southern District of California, this 30<sup>th</sup> day of December, 1938.

HUGH L. DICKSON,

Referee in Bankruptcy.

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[Title of District Court and Cause.]

PETITION FOR ORDER TO SHOW CAUSE  
WHY THE CORPORATION SHOULD NOT  
BE DECLARED THE ALTER EGO OF  
BANKRUPT.

Honorable Hugh L. Dickson, Referee in Bankruptcy:—

Comes now your petitioner, Paul W. Sampsell, and respectfully shows the Referee:

I

That he is the duly elected, qualified and acting trustee in bankruptcy herein.

II

That prior to the election of your petitioner as trustee in bankruptcy herein your petitioner was the duly appointed, qualified and acting receiver in bankruptcy herein.

III

That the Downey Wallpaper & Paint Co., is and was a corporation organized and existing under and

by virtue of the laws of the State of California, with its principal place of business at #821 South Flower Street, Los Angeles, California, which said address is likewise the place of business of the bankrupt herein, Wilbur J. Downey.

## IV

That the respondents, Wilbur J. Downey, Mildred Downey and David Downey are directors, stockholders and president, vice-president, and secretary-treasurer of the Downey Wallpaper & Paint Co., respectively, and between them hold all of the issued capital stock of said corporation.

## V.

8  
That at the date of the adjudication of Wilbur J. Downey as a bankrupt a controversy existed between the bankrupt and his principal creditor, the Standard Coated Products Corporation, a New York Corporation holding a provable claim against the bankrupt in the sum of \$108,103.83, together with interest, and on which a suit was then pending in the Superior Court of the State of California, in and for the County of Los Angeles, as to whether or not said Downey Wallpaper & Paint Co., a corporation, was the alter ego of the bankrupt, Wilbur J. Downey, and whether or not its assets were actually the assets of the said Wilbur J. Downey. That as a result thereof a writ of attachment was issued out of said Superior Court against the assets of said corporation situated in the place of business occupied by the bankrupt, which said writ of attachment was levied upon the stock in trade and



other assets held in the name of said corporation, Downey Wallpaper & Paint Co., and a Keeper placed in charge of the same; that upon the appointment of your petitioner as receiver in bankruptcy a stipulation was entered into between the Standard Coated Products Corporation, the Downey Wallpaper & Paint Co., a corporation, and all of its stockholders, officers and directors, authorizing the release of the attachment on said personal property and turning said personal property standing in the name of said Downey Wallpaper & Paint Co., over to the actual possession of your petitioner, Paul W. Sampsell, as receiver in bankruptcy, to be retained by him and his successor, the trustee in bankruptcy, pending determination of the actual ownership thereof, which said stipulation was duly filed herein after being signed by all the parties, and is hereby referred to and made a part hereof the same as though specifically set forth herein, and that at all times since the execution of said stipulation your petitioner, Paul W. Sampsell, either as receiver in bankruptcy or as trustee in bankruptcy, has been and now is in the actual, physical custody and control of all the stock, fixtures and equipment standing in the name of the Downey Wallpaper & Paint Co., with the consent of said Downey Wallpaper & Paint Co., its officers, directors and stockholders.

## VI.

That your petitioner is informed and believes, and therefore alleges the fact to be that said Downey

Wallpaper & Paint Co., was organized as a corporation to operate merely as the alter ego of the bankrupt herein, Wilbur J. Downey, for the purpose of enabling him to enjoy the profits of the business formerly conducted by him at #821 South Flower Street, for his own use and benefit, and preventing creditors existing at the time of the organization of said corporation, from levying writs of attachment, execution, or other process on the assets of said bankrupt, and that said corporation was organized for the purpose of enabling the said bankrupt, Wilbur J. Downey, to hinder, delay or defraud his creditors, and particularly the Standard Coated Products Corporation, a New York corporation, to which he was at the time of the organization of said Downey Wallpaper & Paint Co., heavily indebted.

## VII.

The trustee bases the preceding allegation on the following facts:

(a) That on the 25th day of June, 1936, the bankrupt, Wilbur J. Downey, was indebted to the Standard Coated Products Corporation, a corporation, in a sum greatly in excess of the sum of \$108,103.83, of which the sum of \$108,103.83, together with interest at the rate of six per cent per annum on \$14,000.00 from April 15, 1938, was due, owing and unpaid at the date of the adjudication of the said Wilbur J. Downey as a bankrupt.

That on June 25, 1936, the bankrupt was engaged in the operation of a wallpaper and paint business

at #821 South Flower Street, Los Angeles, California, in which the indebtedness to the Standard Coated Products Corporation had been incurred; that he had on hand on said date in his place of business, a stock of wallpaper and paint inventoried at the sum of \$14,194.72; that without the knowledge or consent of said Standard Coated Products Corporation, a corporation, and while heavily indebted to it as aforesaid, said Wilbur J. Downey caused to be organized under the laws of the State of California the Downey Wallpaper & Paint Co., and caused all of the capital stock therein to be issued to himself, his wife, Mildred Downey, and to his son, David Downey, and caused himself and his wife, Mildred Downey, and his son, David Downey, to be elected directors thereof, and caused himself to be elected as president, his wife Mildred Downey as vice-president, and his son, David Downey, as secretary-treasurer.

(b) That on June 29, 1936, the first meeting of the board of directors of said Downey Wallpaper & Paint Co., was held, at which meeting the said Wilbur J. Downey made a proposition, in writing, to said corporation, Downey Wallpaper & Paint Co., to transfer to it the stock of wallpaper and paint at #821 South Flower Street, Los Angeles, California, for the sum of \$14,194.72; the entire sale to be made to said corporation on credit, and the purchase price thereof not to be paid until January 1, 1937. That said offer, so the trustee believes, was not sincerely made, in that it spe-



cifically recited that "as a further inducement" the said Wilbur J. Downey was to return to said Downey Wallpaper & Paint Co., five thousand square feet of the store building occupied by him, at #821 South Flower Street, for the sum of \$100.00 per month; that notwithstanding the fact that said corporation had for some time been operated by the members of the family of the said Wilbur J. Downey for the purpose of taking over said business, and notwithstanding the fact that the said Wilbur J. Downey was dealing with his own wife and son, said wife and son and the said Wilbur J. Downey as officers and directors of said Downey Wallpaper & Paint Co., pretended to engage in a full discussion of the proposition made to said corporation by the said Wilbur J. Downey, before accepting the same by resolution.

The trustee is informed and believes, and therefore alleges the fact to be that at the time of said offer on the part of the said Wilbur J. Downey to said corporation, said corporation had little or no capital; that although a permit had been issued by the Corporation Commissioner authorizing the sale of one hundred fifty shares of its stock to Wilbur J. Downey, Mildred Downey and David Downey, at \$100.00 per share, that none of them were in a financial position to purchase anything but normal qualifying shares, and by reason of said financial condition it was necessary to obtain an extension of the permit to July 12, 1938.

That pursuant to the proceedings had at said directors meeting on June 29, 1936, the said Wilbur J. Downey thereafter transferred, entirely on credit, to said corporation, all of the stock of wallpaper and paint owned by him at #821 South Flower Street, and proceeded to operate said business in the same manner as it had theretofore been operated.

That said corporation, Downey Wallpaper & Paint Co., did not pay for said stock on or before January 1, 1937, and said Wilbur J. Downey extended the time to pay by successive extensions at the request of himself, his wife and his son, to June 2, 1939.

That after the discovery of said organization of said corporation and the bankrupt's operations thereunder, said Standard Coated Products Corporation began to press said bankrupt vigorously for the payment of the indebtedness owing to it; that on or about June 30, 1938, while said Standard Coated Products Corporation, a creditor of said bankrupt, was vigorously demanding payment of the obligation owing to it by said bankrupt, said bankrupt, notwithstanding the fact that the purported obligation held by him against said Downey Wallpaper & Paint Co., constituted a substantial part, if not the major part of his assets, and notwithstanding the fact that the permit to issue stock in the Downey Wallpaper & Paint Co., provided that said stock was to be sold at par for cash, lawful money of the United States, to net said corpora-

tion the full amount of the selling price, induced, persuaded and caused said Downey Wallpaper & Paint Co., on June 30, 1938, to issue to him, the said bankrupt, ninety-nine shares of the capital stock of said corporation; That on the following day, July 1, 1938, said bankrupt caused said ninety-nine shares of stock to be transferred, as follows:

25 Shares to David Downey, his son

25 Shares to Wilbur J. Downey

49 Shares to Mildred Downey, his wife

That no reason for the issuance of said shares of stock appear in the Minutes of the board of directors of said corporation, but the trustee is informed and therefore alleges the fact to be that said stock was issued to the said Wilbur J. Downey for the purpose of extinguishing the obligation held by him against the said Downey Wallpaper & Paint Co., in order to prevent the Standard Coated Products Corporation, a creditor, from levying upon it, and that the distribution of said ninety-nine shares of stock by him on July 1, 1938, in the manner aforesaid, was had for the purpose of still further placing the beneficial interest of said stock in trade or the purported obligation incurred by said corporation to the bankrupt in exchange for the transfer, and all other beneficial interests therein, further beyond the reach of his creditors, and particularly the Standard Coated Products Corporation.

(c) That in the operation of said business in the name of said corporation, said bankrupt completely dominated and controlled its activities. That



throughout the life of said corporation no person except the bankrupt's immediate family held any shares of stock therein; that throughout the life of said corporation said bankrupt was continuously elected as president, and still holds said office. That under the provisions of Article IX of the Articles of Incorporation the bankrupt had the sole power to sign checks, without any requirement of counter-signature on the part of his son, who was secretary-treasurer of said corporation; that salaries of \$250.00 per month each were voted to the bankrupt and his son, David Downey.

That at the annual meeting of the directors on July 12, 1937, it appears that said corporation, after the payment of all salaries and expenses, had made a net profit for the fiscal year, amounting to the sum of \$2,698.24, but notwithstanding said net profit said Wilbur J. Downey continued to extend the time for the alleged payment of the obligation incurred for the stock in trade transferred by him to said corporation, as hereinbefore set forth.

(d) That material dates on the stock records of said corporation have been erased, altered and changed. That the trustee is informed, and alleges the fact to be that no stock ledger or journal was kept, and that in all respects said business was operated in the same manner as it had been operated theretofore by said Wilbur J. Downey, and that said corporation is nothing but a sham and a cloak devised by the said Wilbur J. Downey and his family for the purpose of conserving the assets

for himself and his family, and hindering, delaying or defrauding his creditors.

Wherefore, the trustee prays that an order be entered decreeing the organization of the Downey Wallpaper & Paint Co., and all of the transactions hereinbefore set forth, to be fraudulent and void and of no force and effect as against the trustee in bankruptcy herein, and decreeing said Downey Wallpaper & Paint Co., to be the alter ego of said bankrupt, Wilbur J. Downey, and marshalling all of its assets and administering them in this bankrupt estate for the benefit of the creditors of said bankrupt, and for such other and further relief as the Court may deem just and equitable in the premises.

PAUL W. SAMPSELL,  
Trustee in Bankruptcy.

CRAIG & WELLER,  
By THOMAS S. TOBIN,  
Attorneys for Trustee.

United States of America,  
Southern District of California,  
Central Division, County of Los Angeles—ss.

Paul W. Sampsell, being by me first duly sworn, deposes and says: that he is the Trustee in Bankruptcy and Petitioner in the above entitled action; that he has heard read the foregoing Petition for Order to Show Cause Why the Corporation Should Not Be Declared the Alter Ego of Bankrupt and knows the contents thereof; and that the same is

true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

PAUL W. SAMPSELL.

Subscribed and sworn to before me this 30th day of December, 1938.

(Seal)

BESS A. ALDRICH,

Notary Public in and for the County of  
Los Angeles, State of California.

[Endorsed]: Filed Dec. 30, 1938. Hugh L. Dickson, Referee.

[Endorsed]: Filed May 2, 1940. Paul P. O'Brien, Clerk.

[Title of District Court and Cause.]

ANSWER

TO PETITION FOR ORDER TO SHOW  
CAUSE, ETC.

Comes now Wilbur J. Downey, also known as W. J. Downey, and answering the Petition for Order to Show Cause why Downey Wall Paper and Paint Co. should not be declared to be the alter ego of Wilbur J. Downey, denies, admits and alleges:

I.

Denies that prior to the filing of the attachment proceeding in the Superior Court in the matter of Standard Coated Products Corporation versus W. J.

Downey, etc., et al., that said Standard Coated Products Corporation ever claimed that the Downey Wall Paper and Paint Co. was the alter ego of said bankrupt. Admits that upon the appointment of Paul W. Sampsell as receiver in bankruptcy in the above entitled matter that a stipulation was entered into between the Downey Wall Paper and Paint Co. and Paul W. Sampsell as such receiver, a copy of which said stipulation is attached hereto and made a part hereof. Admits that Paul W. Sampsell as receiver has been since his appointment and is now in actual physical custody and control of all the stock, fixtures and equipment belonging to the Downey Wall Paper and Paint Co. under and pursuant to said stipulation.

Denies that the Downey Wall Paper and Paint Co. was organized as the alter ego of the bankrupt herein or for the purpose of enabling said bankrupt to enjoy the profits of the business formerly conducted by him or for his own use or benefit or for the purpose of preventing creditors or said Standard Coated Products Corporation from levying writs of attachment or execution or other processes on the assets of said bankrupt; and denies that said Downey Wall Paper and Paint Co. was organized for the purpose of enabling said bankrupt to hinder or delay or defraud his creditors, or particularly the Standard Coated Products Corporation; and denies that said bankrupt is or was at the time of the filing of his petition in the above entitled matter obligated to pay to said Stand-



ard Coated Products Corporation any sum whatsoever; but admits that heretofore, on the 1st day of April, 1933, said bankrupt executed two-certain promissory notes aggregating \$125,060.72, and that at the time of the filing of the petition in bankruptcy herein said notes were outlawed by the provisions of subdivision 1 of Section 337 of the Code of Civil Procedure of the State of California, and admits that in addition to said demand there was at the date of the filing of the petition in bankruptcy herein due, owing and unpaid to said Standard Coated Products Corporation from said bankrupt the sum of \$4,103.83.

## II.

That it is not true that Wilbur J. Downey became indebted to the Standard Coated Products Corporation while engaged in the operation of a wall paper and paint business in the City of Los Angeles. That said alleged indebtedness to the Standard Coated Products was incurred prior to the time that said bankrupt engaged in business and in accordance with the contract between the Standard Textile Manufacturing Company and said bankrupt, whereby said bankrupt assumed and agreed to pay the obligations of Gottwals and Downey. But it is true that the admitted balance due said Standard Coated Products Corporation is the result of the business conducted by Wilbur J. Downey individually.

That it is not true that without the knowledge or consent of the Standard Coated Products Corpora-

tion or while said bankrupt was heavily indebted to it that said bankrupt caused to be organized under the laws of the State of California the Downey Wall Paper and Paint Co., or caused all of the capital stock therein to be issued to himself and/or to his wife, Mildred Downey, and/or to his son, David Downey, or caused himself or his wife or his son to be elected directors of said corporation, or caused himself to be elected president, or his wife as vice president, or his son as secretary-treasurer.

And in this respect said bankrupt alleges, that prior to the organization of said Downey Wall Paper and Paint Co. he communicated in writing with said Standard Textile Manufacturing Company, the predecessor of Standard Coated Products Corporation, notifying it of his intention to organize said Downey Wall Paper and Paint Co. and explained the reasons therefor, and after the organization of said corporation, said Standard Textile Manufacturing Company and Standard Coated Products Corporation at frequent intervals caused audits to be made of the business being done by said bankrupt individually, and audits of the business of the Downey Wall Paper and Paint Co. were at frequent intervals submitted to the auditors of said Standard Coated Products Corporation.

That as early as the summer of 1935 said bankrupt caused his attorney to visit said Standard Textile Manufacturing Company in New York, to take up with it the matter of the organization of such corporation and other matters in connection with

the business then being done by said bankrupt with said corporation, and in April of 1936 said bankrupt personally called upon said Standard Textile Manufacturing Company and explained his dilemma and the necessity of organizing a corporation for the purpose of expanding his business, and on May 27, 1936, again communicated with said Standard Textile Manufacturing Company calling attention to the conditions existing in Los Angeles and the necessity of the organization of said Downey Wall Paper and Paint Co.; that on June 25, 1936, said corporation was organized, and on September 23, 1936, said bankrupt notified the Standard Textile Manufacturing Company of the organization of said Company and its purpose, and thereafter on March 2, 1937, sent to the Standard Textile Manufacturing Company an audit of his individual business and the business of said corporation, and on February 20, 1938, again sent to the Standard Textile Manufacturing Company and the Standard Coated Products Corporation an audit of his individual business and an audit of said corporation's business, and again on June 3, 1938, said bankrupt forwarded to the Standard Coated Products Corporation an operating statement of the Downey Wall Paper and Paint Company and of said bankrupt individually, clearly setting forth the distinct operations of said bankrupt individually and of said corporation. That from the 1st day of June, 1938, to November 10, 1938, constant negotiations were engaged in between said bankrupt and Standard

Coated Products Corporation and all information concerning the set-up of said corporation, the distribution of stock thereof, and all other financial transactions of said bankrupt and of said corporation, were given to said Standard Coated Products Corporation. That at all times said Downey Wall Paper and Paint Co. has operated separately and distinct from the operations of said bankrupt, has conducted a separate and distinct business, with separate and distinct products from those furnished by said Standard Coated Products Corporation, all to the knowledge of said Standard Coated Products Corporation and of the Standard Textile Manufacturing Company for more than two years last past. That with full knowledge of all of the foregoing, the said bankrupt has paid to the Standard Coated Products Corporation approximately \$5,000.00 arising out of his individual operations and the payment of obligations to him due from the Downey Wall Paper and Paint Co.

That upon the formation of the Downey Wall Paper and Paint Co. said bankrupt sold to said corporation a certain portion of his inventory, for which he received the obligation of said corporation, the proceeds of which said obligation have been paid to said Standard Coated Products Corporation. That at no time or at all have the assets of said bankrupt been diminished or in anywise impaired by reason of the transfer of assets to said Downey Wall Paper and Paint Co., and, to the contrary, said bankrupt obtained a profit by such



transfer in excess of \$1400.00, of all of which said Standard Coated Products Corporation has received the benefit.

That it is not true that the offer made by Wilbur J. Downey to the Downey Wall Paper and Paint Co. was not sincerely made. That said offer was accepted by said corporation and a valid evidence of its indebtedness given to said bankrupt, and said bankrupt made a substantial profit therefrom, all of which would have been paid to said Standard Coated Products Corporation except for the above entitled proceedings.

Denies that there was any simulation in the recitations in the minutes of said corporation in reference to the discussions leading to the consideration for the transfer of assets from said bankrupt to said Downey Wall Paper and Paint Co.; that said discussions occurred between said individuals forming said corporation and the attorney who organized said corporation, and that they were all advised that such constituted a valid and good consideration for said transfer.

That it is true that at the time of the formation of said corporation said corporation had very little capital. That the sum of \$500.00 constituted the only cash that said corporation had at its inception; that said \$500.00 was obtained by Wilbur J. Downey, Mildred Downey and David Downey as a loan from a relative, and was invested as a separate and distinct contribution under a permit issued by the Corporation Commissioner, and five shares of stock

were issued therefor and distributed, three shares to Mildred Downey, one share to David and one share to said bankrupt.

That it is not true that after the discovery of the organization of said corporation the Standard Textile Manufacturing Company or the Standard Coated Products Corporation began to press said bankrupt vigorously for payment of its demands, and, on the contrary, as hereinbefore alleged, said Standard Textile Manufacturing Company, before its business was taken over by the Standard Coated Products Corporation, was well aware of and knew all the facts concerning the organization of Downey Wall Paper and Paint Co. and stood by and did nothing concerning the same and received many thousands of dollars from the operation of said bankrupt's individual business, as well as the benefits of the transactions had by said bankrupt with said Downey Wall Paper and Paint Co.; and that it was not until said bankrupt attempted to secure an adjustment of the demands of said Standard Coated Products Corporation that any effort was made by said last mentioned corporation to compel payment of its demands against said Downey.

That it is not true that said Wilbur J. Downey after the organization of said Company conducted or operated his business in the same manner as it had theretofore been operated; and, to the contrary, said corporation's business was operated separate and distinct and formed no part of the business of

said bankrupt, and there was no commingling of accounts or commingling of stock.

That it is true that after said Wilbur J. Downey had been advised that the statute of limitations had run against the demands of Standard Coated Products Corporation and that he was thereafter no longer legally obligated to pay the demands of said Company, he purchased from said Downey Wall Paper and Paint Co. ninety-nine shares of its capital stock, and that thereupon said Downey Wall Paper and Paint Co. paid to said bankrupt its obligation. That it is not true that said stock was distributed by said bankrupt in the manner alleged for any other reason than to secure the services for said corporation of his son, David Downey; but it is true that the stock distributed to Mildred Downey is community property of Mildred Downey and Wilbur J. Downey, said bankrupt; and it is not true that said distribution of stock was made for the purpose of placing said stock beyond the reach of said bankrupt's creditors. That said bankrupt was at the time of said transfer and at the present time is possessed of assets in excess of the claims of his creditors, and that upon the determination of the validity of the attachments heretofore brought by said Standard Coated Products Corporation against the assets of said corporation and said bankrupt, said bankrupt will be able to pay all of his obligations in full, and that said bankrupt has at all times since the commencement of the above entitled proceeding been solvent.

That it is not true that material or any dates on the stock records of said corporation have been erased or altered or changed. That it is true that no stock journal or ledger has been kept because of the fact that there have been four or five certificates issued and the stock book is sufficient evidence thereof, and it was not necessary to keep a stock journal or ledger, as it was not contemplated that there would be any transfers of stock other than those hereinbefore mentioned; and it is not true that said bankrupt's operations in reference to said corporations were a sham or a cloak; but each and all of the operations hereinbefore set out were done under advice of counsel and by reason of the fact that said advice was to the effect that said bankrupt was not obligated to Standard Coated Products Corporation except as herein alleged, and that as said bankrupt was solvent he had a right to do with his property as he pleased so long as he remained solvent, and that at all times herein mentioned said Downey has been and now is solvent.

Wherefore, said bankrupt prays that the order to show cause be dismissed, and for all proper relief in the premises.

FRANK S. HUTTON

and

RUPERT B. TURNBULL,  
Attorneys for said Bankrupt.



State of California,  
County of Los Angeles—ss.

Wilbur J. Downey being by me first duly sworn, deposes and says: that he is the bankrupt in the foregoing and above entitled matter; that he has read the foregoing Answer to Petition for Order to Show Cause, etc., and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters that he believes it to be true.

WILBUR J. DOWNEY.

Subscribed and sworn to before me this 24th day of January, 1939.

(Seal)

MARIE E. LIDMAN,

Notary Public in and for the County of Los Angeles,  
State of California.

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[Title of District Court and Cause.]

STIPULATION

Whereas, Paul W. Sampsell in the above entitled bankruptcy proceeding has heretofore been appointed and has qualified as Receiver in the matter of the individual bankruptcy estate of said Wilbur J. Downey, by order of the Honorable Hugh L. Dickson, Referee in Bankruptcy; and

Whereas, said Wilbur J. Downey is a large stockholder and owner of a controlling interest, subject

to the above entitled bankruptcy proceeding, in the stock of Downey Wallpaper and Paint Co., a corporation; and

Whereas, there is now being and for some time past has been conducted a business at 821 South Flower Street, in the City of Los Angeles, California, consisting of a jobbing and resale business, both for cash and on credit; and

Whereas, the said Downey Wallpaper and Paint Co. claims a certain interest or ownership in said business and in and to the assets thereof; and

Whereas, said Wilbur J. Downey likewise claims to be the owner of certain assets consisting among other things of various items of stock in trade, accounts receivable, cash on hand and/or in bank, and shares of the corporate stock of said Downey Wallpaper and Paint Co.; and

Whereas, the said business is now under attachment duly levied prior to the institution of the above entitled bankruptcy proceedings, and a sheriff's keeper has been put in charge of said business pursuant to said attachment; and

Whereas, all of the parties signing this stipulation are parties interested or claiming to be interested in the outcome of said bankruptcy proceedings, and mutually agree that it is for the best interest of said bankrupt estate that the said Receiver take possession of said store upon said premises and conduct the said store and/or businesses being conducted therein, and of all assets located in said premises, until a Trustee of said bankrupt

estate shall have been appointed and qualified, or until otherwise ordered by the said Referee;

It is hereby stipulated (subject to approval of said Referee) by and between the parties signing this stipulation as follows:

That the said attachment upon the said properties be discharged by stipulation;

That the said Receiver shall take over forthwith and go into possession of the said store premises and of all properties of every nature now situated in the said store premises, and all of the business or businesses now being conducted in said store premises, with the power and duty of conducting the said business, collecting the accounts receivable thereof, purchasing new merchandise, and in general doing all other things necessary or in the opinion of said Receiver desirable to properly protect and preserve the property of said bankrupt for the creditors of said bankrupt estate.

That said Receiver shall exercise joint control and supervision with the said Wilbur J. Downey over the conduct of said businesses, and shall jointly sign all checks hereafter issued in connection with said businesses; and that in the event of any dispute arising between the said Wilbur J. Downey and said Receiver, or between any of the officers or employees of said businesses in any manner connected with or relating to the conduct of said businesses, the said Receiver shall have the power to decide any and all such disputes, and the said Wilbur J. Downey and the said Downey Wallpaper

and Paint Co., together with its officers, agents, directors and employees, agree to abide by all of such decisions so made by said Receiver;

It is further stipulated that no credit terms of sale in connection with any merchandise sold out of the said store premises or businesses hereafter shall be granted, save such as are first approved in writing by said Receiver;

It is further stipulated that while the aforesaid Paul W. Sampsell is now the Receiver of said business, that it may possibly be that, upon having the first hearing of creditors that a different Trustee in Bankruptcy may be appointed for said estate, in which event the parties hereto, and particularly the Downey Wallpaper and Paint Co., and its officers, agents, directors and employees, do hereby further agree to enter into a similar agreement or stipulation to the foregoing with any such new Trustee or with the said Paul W. Sampsell in his new capacity of Trustee in the event he is so appointed;

It is further hereby stipulated and agreed that if and in the event that at any time in the sole discretion of said Receiver and/or said Trustee who may succeed him hereafter, as aforesaid, that it is determined that said businesses, or either of them, cannot be operated at a profit, that then and in that event said Receiver and/or Trustee shall have the right to liquidate said business or said businesses;

It is further hereby stipulated that the said Receiver and/or his successor Trustee shall be subject to the jurisdiction and review of the Bank-



ruptcy Court at the instance of any interested party.

Dated this 25th day of November, 1938.

DOWNEY WALLPAPER  
AND PAINT CO.

By \_\_\_\_\_

By \_\_\_\_\_

Directors of Downey  
Wallpaper and Paint Co.

WILBUR J. DOWNEY,  
PAUL W. SAMPSELL,

Receiver.

This Stipulation is hereby approved.

Dated: November \_\_\_\_\_, 1938.

Referee in Bankruptcy.

Received copy of the within Answer this \_\_\_\_\_  
day of January, 1939.

Attorneys for Receiver.

Received copy of the with \_\_\_\_\_ this 25  
day of January, 1939.

CRAIG & WELLER,  
Attorneys for Trustee.

[Endorsed]: Filed Jan. 25, 1939. Hugh L. Dickson, Referee. C. M. Commins, Clerk, CD.

[Endorsed]: Filed May 2, 1940. Paul P. O'Brien, Clerk.

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[Title of District Court and Cause.]

FINDINGS OF FACT, CONCLUSIONS OF  
LAW and ORDER QUIETING TITLE TO  
ASSETS.

The Trustee in Bankruptcy herein, Paul W. Sampsell, having filed his petition for an order marshalling the assets of the Downey Wallpaper & Paint Co., and administering them in this bankrupt estate for the benefit of the creditors of said bankrupt, on the ground that the Downey Wallpaper & Paint Co., was the alter ego of the bankrupt, Wilbur J. Downey; an order to show cause having issued requiring the Downey Wallpaper & Paint Co., a corporation, Wilbur J. Downey, Mildred Downey and David Downey, its officers and directors, and sole and only stockholders, to show cause before the undersigned Referee in Bankruptcy at his Court Room, on January 12, 1939, at the hour of 10:00 o'clock A. M. on said date, and said order to show cause having been duly served, and the respondents, Downey Wallpaper & Paint Co., a corporation, Wilbur J. Downey, Mildred Downey and David Downey, having appeared in person and by their attorney, Frank S. Hutton, Esq., and the

Trustee appearing by his attorneys, Messrs. Craig & Weller, and Thomas S. Tobin of counsel, with whom was associated Mr. Benj. S. Parks, at the time and place aforesaid, and hearing thereon having been continued from time to time at the request of the respondents, and said matter having been ultimately heard before the undersigned Referee in Bankruptcy, and testimony having been taken from time to time and said hearing having been concluded on April 7, 1939; and the Referee having considered said evidence and the arguments of counsel, and being fully advised in the premises, now makes and enters the following

#### FINDINGS OF FACTS.

##### I.

The Referee finds that Paul W. Sampsell is the duly elected, qualified and acting Trustee in Bankruptcy in the above named bankrupt estate; that prior to the election of the said Paul W. Sampsell as Trustee of said bankrupt estate he was the duly elected, qualified and acting Receiver in Bankruptcy herein; that the respondent Downey Wallpaper & Paint Co. is and was a corporation organized and existing under and by virtue of the laws of the State of California; that its principal place of business was at No. 821 South Flower Street, Los Angeles, California; that said address No. 821 South Flower Street, Los Angeles, California, is likewise the address of the place of business of the bankrupt herein, Wilbur J. Downey.

## II.

That the respondents, Wilbur J. Downey, Mildred Downey and David Downey, are and were at all times herein mentioned the sole stockholders of record, directors and officers of the Downey Wallpaper & Paint Co.; that the respondent Wilbur J. Downey is and was at all times herein mentioned president thereof; that the respondent Mildred Downey is and was at all times herein mentioned vice-president, and the respondent David Downey is and was at all times herein mentioned secretary-treasurer of the respondent Downey Wallpaper & Paint Co., and that no other persons outside of the immediate family of the bankrupt, Wilbur J. Downey, owned or pretended to own any right, title or interest in and to the capital stock of the respondent Downey Wallpaper & Paint Co.

## III.

That the respondent Mildred Downey is the wife of the bankrupt, Wilbur J. Downey, and the respondent David Downey is the son of the respondents Wilbur J. Downey and Mildred Downey.

## IV.

That upon the appointment and qualification of Paul W. Sampsell as Receiver in Bankruptcy herein, the business standing in the name of the respondent Downey Wallpaper & Paint Co. was being operated in the same store-room and in the same buildings as the business of the bankrupt, Wilbur J. Downey; that upon the election and quali-



fication of the said Paul W. Sampsell as Receiver in Bankruptcy, said Downey Wallpaper & Paint Co., its officers, directors and employees, consented to turn over, and did turn over, to the said Paul W. Sampsell, as Receiver in Bankruptcy, all of its assets, consisting of its stock in trade, fixtures, and other assets, for the purpose of operating the business conducted in the name of the respondent Downey Wallpaper & Paint Co., pending hearing and determination of any right, title or interest therein or thereto claimed by either the bankrupt or his trustee in bankruptcy to be thereafter elected; that said Receiver in Bankruptcy remained in possession of said business and assets up to and including the date of the qualification of the Trustee in Bankruptcy herein; that thereafter, the petitioner herein, as Trustee in Bankruptcy, remained in full possession of the assets and business of the respondent Downey Wallpaper & Paint Co., and that possession of said business and assets was given to said Receiver and Trustee by said Downey Wallpaper & Paint Co., its officers and directors, by stipulation on file in this proceeding.

V.

That at the date of the adjudication of the bankrupt, Wilbur J. Downey, as a bankrupt, the bankrupt was indebted to the Standard Coated Products Corporation, a New York corporation, in the sum of \$108,103.83, together with interest, which said claim was then and there a valid and subsisting

claim against said bankrupt, and on which claim a suit was then pending in the Superior Court of the State of California, in and for the County of Los Angeles, for the purpose of determining whether or not the Downey Wallpaper & Paint Co., respondent herein, was the alter ego of the bankrupt, Wilbur J. Downey, and whether or not its assets were actually the assets of the said Wilbur J. Downey.

## VI.

The Referee finds that on the 25th day of June, 1936, the bankrupt, Wilbur J. Downey, while indebted to the Standard Coated Products Corporation, a corporation, as aforesaid, in the sum of approximately \$104,000.00, caused to be organized under the laws of the State of California respondent corporation, Downey Wallpaper & Paint Co.; that at the time of the organization of said respondent corporation the bankrupt was engaged in the operation of a wallpaper, paint, sanitas and other coated products business at No. 821 South Flower Street, Los Angeles, California, in which the indebtedness to the Standard Coated Products Corporation had been incurred; that said bankrupt had on hand on said date in his place of business a stock of wallpaper and other merchandise inventoried at the sum of \$14,194.72; that without the knowledge or consent of said Standard Coated Products Corporation, a corporation, and while heavily indebted to it, as aforesaid, said bankrupt, Wilbur J. Downey, after causing to be organized under the

laws of the State of California said respondent Downey Wallpaper & Paint Co., caused all of the capital stock therein to be issued to himself, his wife, the respondent Mildred Downey, and to his son, respondent David Downey, and caused himself, his wife Mildred Downey and his son David Downey to be elected as directors of said Downey Wallpaper & Paint Co., and thereafter to be elected president, vice-president and secretary-treasurer, respectively.

#### VII.

That thereafter, on June 29, 1936, at the first meeting of the board of directors of said Downey Wallpaper & Paint Co., and while indebted to the Standard Coated Products Corporation, a corporation, as aforesaid, said bankrupt, Wilbur J. Downey, made a proposition in writing to said corporation Downey Wallpaper & Paint Co. to transfer to it the stock of wallpaper and paint at No. 821 South Flower Street, Los Angeles, California, belonging to him, for the sum of \$14,194.72, which said sale was to be made to said Downey Wallpaper & Paint Co., entirely on credit, and the purchase price of which was not to be paid until January 1, 1937; that said bankrupt, Wilbur J. Downey, further proposed as a further inducement to said Downey Wallpaper & Paint Co. to accept his proposition, that he would lease to said Downey Wallpaper & Paint Co. five thousand square feet of the store building occupied by him at No. 821 South Flower Street, Los Angeles, California, for the sum of \$100.00 per month;

that said bankrupt, Wilbur J. Downey and the respondents herein, Mildred Downey and David Downey, as directors of said Downey Wallpaper & Paint Co., thereupon caused to be entered in the minutes of said corporation a statement that said directors engaged in a full discussion of the proposition made to said corporation by said Wilbur J. Downey before accepting the same by resolution.

#### VIII.

The Referee finds that said proposition to sell said property described in the preceding paragraph of these findings was not made by the bankrupt to said Downey Wallpaper & Paint Co. in good faith, but was actually made for the purpose of placing said stock in trade beyond the reach of creditors of said Wilbur J. Downey, and particularly beyond the reach of the Standard Coated Products Corporation, and for the purpose of retaining for the said Wilbur J. Downey and the members of his immediate family all of the beneficial interest therein.

#### IX.

The Referee finds that said Downey Wallpaper & Paint Co. at the time of said transfer had little or no capital; that neither Wilbur J. Downey, Mildred Downey nor David Downey were in a financial position to purchase anything but qualifying shares in said respondent corporation, Downey Wallpaper & Paint Co.; that the financial condition of said Downey Wallpaper & Paint Co. was such that it was necessary for it to obtain from the Corporation



Commissioner of the State of California an extension of the permit to issue its capital stock, to July 12, 1938.

X.

That pursuant to the proceedings had at the first meeting of the board of directors, held on June 29, 1936, as aforesaid, said Wilbur J. Downey thereafter transferred, entirely on credit, to said Downey Wallpaper & Paint Co., all of the stock of wallpaper and paint owned by him at No. 821 South Flower Street, Los Angeles, California, and proceeded to operate said business in the same manner as it had theretofore been operated.

XI.

That in connection with the operation of said business in the name of the Downey Wallpaper & Paint Co., the respondent, Mildred Downey, took no part whatsoever in the direction, control or operation of said business or of the affairs of said corporation; that notwithstanding the fact that the respondent David Downey was secretary and treasurer of said corporation, the right to sign checks on the corporation's bank account was expressly denied to him, and all checks on the corporation's bank account were authorized to be signed only by the president and bankrupt, Wilbur J. Downey, as had been the custom when said business was conducted by the bankrupt alone; that the stock in trade transferred by said bankrupt to said Downey Wallpaper & Paint Co. remained in the

same place of business as theretofore; that no segregation thereof was made other than such as existed prior to the date of said transfer; that the same employees were retained and merchandise sold in the same manner as it had been sold prior to said transfer; that the large and conspicuous signs which had been used on said place of business by said bankrupt prior to the date of said transfer remained and were not in any manner changed or altered; that the only indication that a new corporation was doing business on said premises was by means of two small inconspicuous signs bearing the name "Downey Wallpaper & Paint Co."; that the diamond trademark formerly used by the bankrupt was continued as the trademark of said respondent corporation, Downey Wallpaper & Paint Co.; that the arrangement of the signs on said place of business was such as would not lead any person to believe that a new business was occupying a part of the premises; that the largest sign on said building and the only one bearing Neon lighting and which was illuminated at night was the same sign as had been used by the bankrupt, Wilbur J. Downey, in the conduct of his individual business prior to the organization of the respondent corporation, Downey Wallpaper & Paint Co., and was not in any manner modified to show that it was a corporation, and did not have removed therefrom any of the parts thereof which indicated that Wilbur J. Downey was not any longer conducting the wallpaper and paint business in said premises.

**XII.**

That in connection with the payment of the purported obligation incurred by said corporation to the bankrupt, Wilbur J. Downey, as the purchase price of his stock in trade hereinbefore described, the respondent, Wilbur J. Downey, repeatedly granted extensions of time to said respondent corporation in the payment of said obligation, and that said extensions of time were voluntarily granted to said respondent corporation by said bankrupt, Wilbur J. Downey, and that at the time of the filing of the petition in bankruptcy herein there was in existence an extension of the time of payment of said obligation to June 2, 1939.

**XIII.**

That on or about the 15th of June, 1938, the Standard Coated Products Corporation began pressing said bankrupt, Wilbur J. Downey, for payment of the obligation owing to it by said bankrupt, and thereafter, on June 30, 1938, at a time when said Standard Coated Products Corporation was vigorously demanding payment of said obligation, said bankrupt, notwithstanding the fact that the obligation held by him against the Downey Wallpaper & Paint Co. constituted the larger part of his assets, and while hopelessly insolvent, for the purpose of hindering, delaying or defrauding his creditors, and particularly the Standard Coated Products Corporation, without notice to it, caused the Downey Wallpaper & Paint Co. to issue to him 99 shares



of the capital stock of said Downey Wallpaper & Paint Co., in satisfaction in full of said obligation; that at the time of the issuance of said shares of stock to the said bankrupt, there was outstanding a permit from the Corporation Commissioner of the State of California authorizing the issuance of the shares of the capital stock of the Downey Wallpaper & Paint Co. only for cash; that said permit was the only permit to issue said shares in existence at said time; that notwithstanding the plain terms and provisions of said permit, said Downey Wallpaper & Paint Co., and its officers and directors, proceeded to and did issue to the said Wilbur J. Downey on June 30, 1938, 99 shares of the capital stock of said corporation, and that on the following day, July 1, 1938, said bankrupt caused 49 shares of said stock to be transferred to the respondent Mildred Downey and 25 shares of said stock to his son, David Downey, entirely without consideration to him.

#### XIV.

The Referee finds that said issuance of said 99 shares of stock, as described in the preceding finding, in satisfaction of the obligation owing to the bankrupt by said Downey Wallpaper & Paint Co., was brought about by the bankrupt and the other respondents herein for the purpose of preventing the Standard Coated Products Corporation from levying writs of attachment, garnishment or execution upon said obligation in the enforcement of its claim against the bankrupt, Wilbur J. Downey,



and that the further transfer by the bankrupt, Wilbur J. Downey, of the 25 shares of the capital stock so issued to his son, David Downey, and the 49 shares to his wife, Mildred Downey, was accomplished for the purpose of further placing beyond the reach of said Standard Coated Products Corporation any beneficial interest in said obligation owing said bankrupt by the Downey Wallpaper & Paint Co. of which it might avail itself in the collection of its indebtedness owing to it by said bankrupt.

XV.

That in accomplishing the issuance of said 99 shares of stock to said respondents no cash whatsoever was paid therefor, but a fictitious cash consideration was created by means of an exchange of checks between the bankrupt, Wilbur J. Downey, and the Downey Wallpaper & Paint Co., which exchange of checks occurred simultaneously and at a time when neither of the makers of said checks had sufficient funds in their respective bank accounts to have paid said checks or either of them, except for the exchange thereof.

XVI.

That in the operation of the business carried in the name of said Downey Wallpaper & Paint Co., said bankrupt completely dominated and controlled its activities; that throughout the existence of said corporation the bankrupt was continuously and systematically elected as president, and is still the holder of that office; that on July 12, 1937, after the

payment of all salaries and expenses, said corporation had made a net profit for the preceding fiscal year amounting to the sum of \$2,698.24, but that said bankrupt, Wilbur J. Downey continued to extend the time for the payment of the obligation incurred in his favor by said corporation for the transfer of said stock in trade.

#### XVII.

The Referee finds that the business transferred by the bankrupt to the respondent Downey Wallpaper & Paint Co. was the business engaged in by the bankrupt from which the largest measure of profit was obtained, and that the business retained by him, to-wit, the sale of sanitas and other coated products, was a business in which little or no margin of profit had been realized by him during the period just immediately preceding such transfer.

#### XVIII.

The Referee finds from all of the evidence that said corporation Downey Wallpaper & Paint Co. was at all times during its existence and now is nothing but a sham and a cloak devised by Wilbur J. Downey, the bankrupt herein, and members of his immediate family, for the purpose of preserving and conserving his assets so far as possible for the benefit of himself and the immediate members of his family, and that said corporation was organized, conducted and operated by said bankrupt and members of his immediate family for the purpose of hindering, delaying and defrauding his creditors, and particularly the Standard Coated Products

Corporation in the collection of its debt.

Based on the foregoing Findings of Fact the Referee makes the following

### CONCLUSIONS OF LAW.

#### I.

That the Referee has summary jurisdiction over the persons of the respondents, and each of them, over the subject matter of this action, and over the property and assets herein involved.

#### II.

That the respondent Downey Wallpaper & Paint Co., a California corporation, is and was at all times herein mentioned in law the alter ego of the bankrupt, Wilbur J. Downey; that its organization, creation and operation throughout its entire life constituted and does constitute a fraud on creditors existing on the date of the filing of petition in bankruptcy, and particularly the Standard Coated Products Corporation.

#### III.

That the transfer of the stock in trade of Wilbur J. Downey to the Downey Wallpaper & Paint Co. set forth in the Findings of Fact herein, the issuance of the 99 shares of the capital stock to the bankrupt, Wilbur J. Downey, on June 30, 1938, and the transfer by him to the respondent David Downey of 25 shares and to Mildred Downey of 49 shares of said capital stock on July 1, 1938, and each of them, were and are fraudulent and void as against all creditors existing at the dates of each



of said transfers, and are null and void and of no force and effect as against the trustee 'in bankruptcy, as successor in interest of such creditors.

#### IV.

That the Trustee is entitled to an order decreeing said Downey Wallpaper & Paint Co. to be the alter ego of said bankrupt, Wilbur J. Downey, quieting title to all of its assets, and marshalling said assets in his bankrupt estate for the benefit of his creditors.

And based on the foregoing Findings of Fact and Conclusions of Law, the Referee makes the following

[Title of District Court and Cause.]

#### **ORDER QUIETING TITLE TO AND MARSHALLING ASSETS OF DOWNEY WALLPAPER & PAINT CO.**

The above entitled matter coming on for hearing before the undersigned Referee in Bankruptcy, Hugh L. Dickson, at his Court Room in Los Angeles, California, on January 12, 1939, and the Trustee and the respondents having appeared in person and by counsel, and said hearing having been concluded on April 7, 1939, and the Referee having fully considered the evidence and arguments of counsel, and having made Findings of Fact and Conclusions of Law incorporated herein, and being fully advised in the premises,

Now on motion of Messrs. Craig & Weller (Thomas S. Tobin of counsel) and Benj. S. Parks, associate counsel for the Trustee, it is



Ordered, Adjudged and Decreed that the Downey Wallpaper & Paint Co., a California corporation, is the alter ego in law and in fact of the bankrupt, Wilbur J. Downey; that all of its assets, and particularly its stock in trade and fixtures, are property of the bankrupt estate which have been secreted and concealed in the name of said Downey Wallpaper & Paint Co., as a fraudulent transferee thereof.

It Is Further Ordered, Adjudged and Decreed that the Trustee in Bankruptcy herein, under the provisions of Section 70 a, subdivisions (4) and (5) of the Bankruptcy Act of the United States, is the owner of all of said personal property and assets, free of any right, title, interest, lien or claim thereto or thereon on the part of any and all of the respondents herein.

It Is Further Ordered, that said stock in trade, furniture, fixtures and equipment, accounts receivable and all other assets of said respondent Downey Wallpaper & Paint Co., of every kind and character whatsoever, be marshalled in the estate of the above named bankrupt, converted into cash by the Trustee after proper appraisal and inventory, and administered for the benefit of the creditors of bankrupt.

Done at Los Angeles, in the Southern District of California, this 7th day of April, 1939.

HUGH L. DICKSON,

Referee in Bankruptcy.

[Endorsed]: Filed May 2, 1940. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals for the  
Ninth Circuit

No. 9422

IMPERIAL PAPER & COLOR CORPORATION,

Appellant,

vs.

PAUL W. SAMPSELL, Trustee,

Appellee.

**ORDER.**

It is hereby ordered that the clerk of the District Court certify and transmit to the clerk of this court a supplemental record in the above entitled case, which supplemental record shall contain copies of (1) Schedules "A" and "B" annexed to the petition in bankruptcy filed by Wilbur J. Downey, bankrupt, (2) all proofs of debt or proofs of claim filed by creditors of said bankrupt other than appellant, Imperial Paper & Color Corporation, and (3) the inventory, if any, of the property of said bankrupt filed by the trustee.

WILLIAM DENMAN,  
United States Circuit Judge;

CURTIS D. WILBUR,  
United States Circuit Judge;

CLIFTON MATHEWS,  
United States Circuit Judge.

[Endorsed]: Filed July 11, 1940. Paul P.  
O'Brien, Clerk.

# SUMMARY DEBTS AND ASSETS

## Form

(From the Statements of the Bankrupt in Schedules A and B)

Schedule A	1(1)	Taxes and Debts due United States	6.66
"	A 1(2)	Taxes due States, Counties, Districts and Municipalities	25.56
"	A 1(3)	Wages	None
"	A 1(4)	Other debts preferred by law	None
"	A 2	Secured claims	632.05
"	A 3	Unsecured claims	131,695.54
"	A 4	Notes and bills which ought to be paid by other parties thereto	None
"	A 5	Accommodation paper	None
Schedule A, total			132,359.81

Schedule B	1	Real Estate	None
"	B 2-a	Cash on hand	None
"	B 2-b	Bills, promissory notes and securities	None
"	B 2-c	Stock in trade	300.00
"	B 2-d	Household goods, etc.	300.00
"	B 2-e	Books, prints and pictures	None
"	B 2-f	Horses, cows and other animals	None
"	B 2-g	Carriages and other vehicles	1,000.00
"	B 2-h	Farming stock and implements	None
"	B 2-i	Shipping and shares in vessels	None
"	B 2-k	Machinery, tools, etc.	347.86
"	B 2-l	Patents, copyrights and trade marks	None
"	B 2-m	Other personal property	None
"	B 3-a	Debts due on open account	5,865.83
"	B 3-b	Stocks, negotiable bonds, etc.	2,700.00
"	B 3-c	Policies of insurance	
"	B 3-d	Unliquidated claims	None
"	B 3-e	Deposits of money in banks and elsewhere	1,054.55
"	B 4	Property in reversion, remainder, trust, etc.	None
"	B 5	Property claimed to be exempt	300.00
"	B 6	Books, deeds and papers	None
Schedule B, total			11,568.24

WILBUR J. DOWNEY,

Petitioner.

**SCHEDULE A. STATEMENT OF ALL DEBTS****SCHEDULE A.(1)—STATEMENT OF ALL CREDITORS WHO ARE PAID IN FULL OR TO WHOM PRIORITY IS SECURED BY LAW.**

	Dollars	Cents
(1) Taxes and debts due and owing to the United States. Claims which have priority. Collector of Internal Revenue, 939 South Broadway, Los Angeles, California	6	66
(2) Taxes due and owing to the State of California or to any county, district or municipality thereof. State of California, Sales Tax Division, Sacramento, California	14	16
State of California, Unemployment Reserve Commission, Sacramento, California	11	40
(3) Wages due workmen, clerks or servants to an amount not exceeding \$300 each, earned within three months before filing this petition	None	
(4) Other debts having priority by law	None	
<b>Total</b>	<b>32</b>	<b>22</b>

**WILBUR J. DOWNEY,**  
Petitioner.

**SCHEDULE A (2)—CREDITORS HOLDING SECURITIES**

(N. B.—Particulars of Securities held, with dates of sale, and when they were given, to be stated under the names of the several creditors, and also particulars concerning each debt, as required by the acts of Congress relating to Bankruptcy; and whether contracted as partner or joint contractor with any other person, and if so, with whom.)

	Dollars	Cents
Howard Motor Car Company, 1367 South Figueroa Street, Los Angeles, California	382	05
Security—one Buick Sedan 1938 model, secured by vendor's title retaining contract of \$1000.00		



	Dollars	Cents
Standard Coated Products Company, 75 Varick Street, New York, N. Y.	250.00	
Consigned merchandise, estimated approximate value \$250.00		
Total	632.05	

## WILBUR J. DOWNEY

### SCHEDULE A (3)—CREDITORS WHOSE CLAIMS ARE UNSECURED

(N. B.—When the name and residence (or either) of any drawer, maker, endorser or holder of any bill or note, etc., are unknown, the fact must be stated, also the name and residence of the last holder known to the debtor. The debt due to each creditor must be stated in full, and any claim by way of set-off stated in the schedule of property).

	Dollars	Cents
Blake, Moffitt and Towne, 242 South Los Angeles Street, Los Angeles, California	25.89	
Frank S. Hutton, 725 Citizens National Bank Building, Los Angeles, California	1,000.00	
Standard Coated Products Company, 75 Varick Street, New York, New York	3,983.93	
Liability and amount both disputed.		
Standard Coated Products Company, 75 Varick Street, New York, New York	14,000.00	
One promissory note dated April 1, 1933, interest and attorneys fees—barred by Statute of Limitations, Section 337 Code of Civil Procedure of California.		
Standard Coated Products Company, 75 Varick Street, New York, New York	111,060.72	
One promissory note dated April 1, 1935, attorneys fees, interest, principal sum. Disputed as to liability and amount, petitioner claims same barred by Section 337, Code of Civil Procedure of California		
Standard Textile Products Company, 75 Varick Street, New York, New York.		

Liability, if any, under agreement dated April 1, 1933, between Standard Textile Products Company and its assignee, Standard Coated Products Company, alleged liability of petitioner being the same amount as previously stated. Liability under said contract denied and amount disputed.

Downey Wall Paper & Paint Company, 821  
South Flower Street, Los Angeles, California. 1,625.00  
Total 131,695.54

**WILBUR J. DOWNEY,**  
Petitioner.

**SCHEDULE A(4)—LIABILITIES ON NOTES OR BILLS  
DISCOUNTED WHICH OUGHT TO BE PAID BY THE  
DRAWERS, MAKERS, ACCEPTORS OR INDORSERS.**

(N. B.—The dates of the notes or bills, and when due, with the names, residences, and the business or occupation of the drawers, makers or acceptors thereof, are to be set forth under the names of the holders. If the names of the holders are not known, the name of the last holder known to the debtor shall be stated, and his business and place of residence. The same particulars as to notes or bills, on which the debtor is liable as indorser).

None

**WILBUR J. DOWNEY,**  
Petitioner.

**SCHEDULE A(5)—ACCOMMODATION PAPER**

(N. B.—The dates of notes or bills, and when due, with the names and residences of the drawers, makers and acceptors thereof, are to be set forth under the names of the holders; if the bankrupt be liable as a drawer, maker, acceptor or indorser thereof, it is to be stated accordingly. If the names of the holders are not known, the name of the last holder

known to the debtor should be stated, with his residence.  
Same particulars as to the other commercial paper).

None

**WILBUR J. DOWNEY,**  
Petitioner.

### OATH OF SCHEDULE A

United States of America,  
Southern District of California,  
Central Division—ss.

On this 18th day of November, A. D. 1938, before me, personally came Wilbur J. Downey, the person mentioned in and who subscribed to the foregoing schedule and who, being by me first duly sworn, did declare the said schedule to be a statement of all his debts, in accordance with the Acts of Congress relating to Bankruptcy.

(Seal) **JESSIE M. HUMPHREY,**  
Notary Public, L. A. Co., Calif.

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### SCHEDULE B. STATEMENT OF ALL PROPERTY OF BANKRUPT

#### SCHEDULE (1) REAL ESTATE

None

**WILBUR J. DOWNEY,**  
Petitioner.

## SCHEDULE B(2)—PERSONAL PROPERTY

Dollars Cents

- A. Cash on Hand—None.
- B. Bills of Exchange, promissory notes, or securities of any description, (each to be set out separately).—None.
- C. Stock in trade in business of Downey Wall Paper & Paint Company at 821 South Flower Street of the value of  
Consisting of sanitas and table oil cloth, estimated at 300.00
- D. Household goods and furniture, household stores, wearing apparel and ornaments of the person, viz:  
Community interest of petitioner in and to household goods and furniture, situated at 1205 South St. Andrews Place, Los Angeles, California, of the value of 300.00
- Total 600.00

WILBUR J. DOWNEY,  
Petitioner.

- E. Books, prints and pictures, viz: None.
- F. Horses, cows, sheep and other animals (with number of each), viz: None.
- G. Carriages and other vehicles, viz:  
One Buick Sedan 1938 model, covered by vendor's title retaining contract of \$1,000.00 1,000.00
- H. Farming stock and implements of husbandry, viz: None.
- Total 1,000.00

WILBUR J. DOWNEY,  
Petitioner.

- I. Shipping and shares in vessels, viz: None.
- K. Machinery, fixtures, apparatus and tools used in business, with the place where each is situated, viz:



Dollars Cents

Furniture and fixtures in place of business of  
Downey Wall Paper & Paint Company, 821  
South Flower Street, Los Angeles, California 347.86

- L. Patents, copyrights and trademarks, viz: None.  
M. Goods or personal property of any other description, with the place where each is situated, viz: None.

Total 347.80

WILBUR J. DOWNEY,  
Petitioner.

SCHEDULE B(3)—CHOSSES IN ACTION

- A. Debts due petitioner on open account.  
H. L. Van Deusen, 941½ North Vendome  
Street, Los Angeles, California 45.63  
Book accounts as per books of petitioner 5,820.20
- B. Stock in incorporated companies, interest in  
joint stock companies, and negotiable bonds.  
Twenty-seven (27) shares capital stock of  
Downey Wall Paper & Paint Company, par  
value \$100.00 each 2,700.00  
Interest of petitioner, if any, in and to shares  
of stock of Downey Wall Paper & Paint  
Company, belonging to wife of petitioner,  
Mildred Downey.  
Interest of petitioner, if any, in and to shares  
of stock of Downey Wall Paper & Paint Com-  
pany, belonging to son of petitioner, David  
Downey.
- C. Policies of Insurance.  
One policy of \$20,000.00 with Occidental Life  
Insurance, payable to petitioner's wife, Mil-  
dred Downey, annual premium \$984.00.  
One policy, paid up, of \$456.00, with Penn Mu-  
tual Life Insurance Company, payable to  
wife, Mildred Downey.
- D. Unliquidated Claims of every nature with their  
estimated value.—None.

**E. Deposits of money in banking institutions and elsewhere.**

Dollars Cents

Deposit in bank, attached by creditors..... 1,054.55

Total 9,620.38

**WILBUR J. DOWNEY,**  
Petitioner.

**SCHEDULE B(4)—PROPERTY IN REVERSION, REMAINDER OR EXPECTANCY, INCLUDING PROPERTY HELD IN TRUST FOR THE DEBTOR OR SUBJECT TO ANY POWER OR RIGHT TO DISPOSE OF OR TO CHARGE.**

N. B.—A particular description of each interest must be entered. If all, or any of the debtor's property has been conveyed by deed of assignment or otherwise, for the benefit of creditors, the date of such deeds should be stated, then name and address of the person to whom the property was conveyed; the amount realized from the proceeds thereof, and the disposal of the same, as far as known to the debtor.

Interest in land.—None.

Personal property.—None.

Property in money, stocks, shares, bonds, annuities, etc.—None.

Rights and powers, legacies and bequests.—None.

Total.....

Property heretofore conveyed for the benefit of Creditors.

What portion of Debtor's property has been conveyed by deed of assignment, or otherwise for benefit of creditors; date of such deed, name and address of party to whom conveyed; amount realized therefrom, and disposal of same, so far as known to debtor.

What sum or sums have been paid to counsel, and to whom for services rendered or to be rendered in this bankruptcy.—None.

Total.....

**WILBUR J. DOWNEY,**  
Petitioner.

**SCHEDULE B(5)**—A particular statement of the Property claimed as Exempt from the Acts of Congress relating to Bankruptcy, giving each item of Property and its valuation; and if any portion of it is Real Estate, its location, description and present use.

Dollars Cents

Military uniforms, arms and equipments.—None.

Property claimed to be exempt by State Laws; its valuation; whether real or personal; its description and present use; and reference given to the statute of the State creating the exemption.

Household goods—community interest of petitioner in and to household goods and furniture, situated at 1205 South St. Andrews Place, Los Angeles, California, claimed exempt under Section 690.2 Code of Civil Procedure. 300.00

Life insurance policy with Occidental Life Insurance Company, payable to wife, Mildred Downey.

Life insurance policy with Penn Mutual Life Insurance, payable to wife, Mildred Downey.

Total 300.00

**WILBUR J. DOWNEY,**  
Petitioner.

**SCHEDULE B(6)—BOOKS, PAPERS, DEEDS AND WRITINGS RELATING TO BANKRUPT'S BUSINESS AND ESTATE.**

The following is a true list of all Books, papers, deeds and writings relating to my trade, business dealings, estate and effects, or any part thereof, which at the date of this petition, are in my possession, or under my custody or control, or which are in the possession or custody of any person in trust for me, or for my use, benefit or advantage; and also of all others which have been heretofore, at any time, in my possession or under my custody or control, and which are



now held by the parties whose names are hereinafter set forth, with the reason for their custody of the same.

Books—None.

Deeds—None.

Papers—None.

**WILBUR J. DOWNEY,**  
Petitioner.

### OATH TO SCHEDULE B

United States of America,  
Southern District of California,  
Central Division—ss.

On this 18th day of November, A. D. 1938, before me, personally came Wilbur J. Downey, the person mentioned in and who subscribed to the foregoing schedule and who, being by me first duly sworn, did declare the said schedule to be a statement of all his estate, both real and personal, in accordance with the Acts of Congress relating to bankruptcy.

(Seal) **JESSIE M. HUMPHREY,**  
Notary Public, L. A. Co., Calif. 2/14/39

[Endorsed]: Filed Nov. 18, 1938. R. S. Zimmerman, Clerk.

[Title of District Court and Cause.]

### PROOF OF DEBT DUE.

At New York, in the Southern District of New York, on the 5th day of December, 1938, came H. J. Hemingway, of the City of New York, County of New York, State of New York, and made oath and says:



That he is president of Standard Coated Products Corporation, a corporation incorporated by and under the laws of the State of New York, and carrying on business at Los Angeles, County of Los Angeles, State of California, which corporation is the creditor making this proof of debt.

That the said Wilbur J. Downey, also known as W. J. Downey, the person duly adjudicated a bankrupt herein on November 19, 1938, was at the date of the adjudication, as aforesaid, and still is, justly and truly indebted to said claimant, in the sum of \$4,101.14. That the consideration of said debt is as follows: Goods, wares and merchandise sold and delivered within four years last past by the claimant, an itemized bill of which, marked Exhibit "D", is hereto annexed and referred to as a part hereof. That no part of said debt has been paid, no note has been received, nor judgment rendered for said indebtedness, nor for any part thereof, except as hereinabove stated; that there are no setoffs or counterclaims to the same; that the purchase price of said goods, wares and merchandise became due on the dates set out on said itemized bill; and that said claimant has not, nor has any other person by claimant's order, or to the knowledge or belief of deponent, or for claimant, had or received any manner of security for said debt.

Said claimant hereby constitutes and appoints Benjamin S. Parks and Herbert W. Kidd, or their representatives, and each of them, its true and lawful attorneys in fact to represent said claimant

in said matter, with full authority to attend the meeting or meetings of creditors of the bankrupt aforesaid at a Court of Bankruptcy, wherever advised or directed to be holden, on the day and at the hour appointed and notified by said Court in said matter, or at such other time and place as may be appointed by the Court for holding such meeting or meetings, or at which meeting or meetings or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion for and in the name of claimant to vote for or against any proposal or resolution that may be then submitted under the acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of said bankruptcy, and for claimant to appoint such trustee or trustees and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also to accept or reject any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due claimant under any composition or otherwise and for any other purpose whatsoever in the interest of claimant to perform acts and execute consents and documents with full power of substitution, and claimant does hereby revoke any and all prior powers of attorney that may have been given by claimant.

H. J. HEMINGWAY,

President, Standard Coated  
Products Corporation.

Subscribed and sworn to before me this 5th day of December, 1938, and also acknowledged on this date by the subscriber, H. J. Hemingway, who is personally known to me and who is known by me to be the president of Standard Coated Products Company, claimant in the foregoing proof of debt.

(Seal) ELLEN M. GRIFFIN,

Notary Public in and for the County of New York,  
State of New York. Notary Public, Westches-  
ter Co.

Certificates filed in N. Y. Co. Clk's No. 1037, Reg.  
No. 9-G-587. Bronx Co. Clk's No. 65, Reg. No. 208-  
G-39.

Commission Expires March 30, 1939.

No. 72346

State of New York,  
County of New York—ss.

I, Archibald R. Watson, Clerk of the County of  
New York, and also Clerk of the Supreme Court in  
and for said county,

Do Hereby Certify, That said Court is a Court  
of Record, having by law a seal; that Ellen M.  
Griffin, whose name is subscribed to the annexed  
certificate or proof of acknowledgment of the an-  
nexed instrument was at the time of taking the  
same a Notary Public acting in and for said county,  
duly commissioned and sworn, and qualified to act  
as such; that he has filed in the Clerk's Office of  
the County of New York a certified copy of his

appointment and qualification as Notary Public for the County of Westchester with his autograph signature; that as such Notary Public, he was duly authorized by the laws of the State of New York to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this state; and further, that I am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof of acknowledgment is genuine.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 6th day of Dec., 1938.

(Seal)

ARCHIBALD R. WATSON,

Clerk.

EXHIBIT "D"

STATEMENT OF ACCOUNT

Standard Coated Products Corporation

75 Varick Street, New York, N. Y.

New York, December 5, 1938

Mr. W. J. Downey,

821 S. Flower St., Los Angeles, California.

Terms From Date of Invoice—Payable in New York

Funds—All Goods Sold F. O. B. Our Factory

7/14/38

\$ 31.35

June Balance

\$ 586.80



10/26/37	227.20
6/25/38	25.59
6/27/38	64.80
6/27/38	26.31
6/27/38	6.24
6/27/38	18.48
6/27/38	8.07
6/28/38	10.20
6/28/38	57.20
6/28/38	165.05
6/28/38	49.15
6/28/38	79.25
6/29/38	33.26
6/29/38	14.20
6/29/38	37.15
6/29/38	6.50
6/30/38	4.50
6/30/38	45.55
6/30/38	29.75
7/1/38	42.75
7/1/38	77.85
7/1/38	64.35
7/1/38	5.35
7/1/38	2.35
7/2/38	13.10
7/5/38	63.75
7/5/38	74.15
7/5/38	8.40
7/6/38	90.40
7/6/38	25.60
7/7/38	57.50
7/7/38	30.45

7/7/38	221.80
7/9/38	79.60
7/8/38	35.45
7/8/38	25.50
7/8/38	8.40
7/11/38	318.75
7/11/38	19.10
7/11/38	12.75
7/11/38	2.30
7/12/38	11.20
7/12/38	115.40
7/12/38	10.90
7/13/38	40.85
7/14/38	45.90
7/15/38	143.00
7/15/38	9.03
7/15/38	2.80
7/15/38	46.15
7/15/38	11.20
7/15/38	39.45
7/16/38	5.60
7/16/38	44.20
7/18/38	39.30
7/19/38	2.80
7/19/38	8.40
7/20/38	68.05
7/20/38	21.65
7/20/38	35.70
7/21/38	2.80
7/22/38	22.40
7/22/38	9.01
7/23/38	128.25

7/25/38	9.03
7/25/38	129.00
7/25/38	2.80
7/26/38	140.50
7/26/38	38.80
7/26/38	5.10
7/26/38	7.80
7/26/38	3.01
7/26/38	124.20
7/27/38	5.60
7/28/38	105.70
7/27/38	103.75
7/27/38	9.75
7/27/38	2.80
7/28/38	7.55
7/28/38	255.00
7/28/38	26.11
7/29/38	78.45
7/29/38	336.35
7/29/38	30.75
7/29/38	4.30
8/1/38	14.65
8/1/38	42.10
8/2/38	11.00
8/2/38	2.55
8/2/38	534.90
8/3/38	18.30

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\$5,719.64

7/2/38 (Credit)	2.80
8/2/38     "	2.80

8/19/38 Overpaid	10.00
9/1/38 (Credit)	2.80
9/28/38 "	10.61
10/31/38 "	2.69

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 31.70

8/16/38 Payment	586.80
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9/26/38 "	1,000.00
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 1,618.50

\$4,101.14

[Endorsed]: Filed Dec. 14, 1938. Hugh L. Dickson, Referee.

[Title of District Court and Cause.]

**PROOF OF DEBT DUE FOR \$1625.**

At Los Angeles, in the Southern District of California on the 15 day of December, 1938, came David Downey of Los Angeles, County of Los Angeles, State of California and made oath and says:

That he is Secy treasurer of Downey Wallpaper & Paint Co., a corporation incorporated by and under the laws of the State of California, and carrying on business at 821 S. Flower St., County of Los Angeles, State of California and that he is duly authorized by said corporation to make this Proof of Debt and execute this Letter of Attorney, and executed same on behalf of said corporation.

That said corporation has no treasurer but the



duties of deponent most nearly correspond to those of Treasurer.

That the treasurer or corresponding officer of said corporation is not within the district wherein this bankruptcy proceeding is pending and this deposition is made by deponent as agent of said corporation and deponent has knowledge of the facts concerning this claim and power of attorney.

That the said Wilbur J. Downey, the person whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said claimant, in the sum of \$1625.00 Sixteen hundred twenty five and no cents.....Dollars; that the consideration of said debt is as follows: Goods, wares and merchandise sold and delivered within four years last past by the claimant, an itemized bill of which, marked Exhibit "A," is hereto annexed and referred to as a part hereof.

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that no part of said debt has been paid, no note has been received, nor judgment rendered for said indebtedness, nor for any part thereof, except as hereinabove stated; that there are no setoffs or counterclaims to the same; that the purchase price of said goods, wares and merchandise became due on the dates set out on said itemized bill; and that said claimant has not, nor has any other person by claimant's order, or to the knowledge or belief of

deponent, or for claimant, had or received any manner of security whatever for said debt.

Said claimant hereby constitutes and appoints, Frank S. Hutton or their representatives and each of them, its true and lawful attorney in fact to represent said claimant in said matter, with full authority to attend the meeting or meetings of creditors of the bankrupt aforesaid at a Court of Bankruptcy, wherever advised or directed to be holden, on the day and at the hour appointed and notified by said Court of said matter, or at such other time and place as may be appointed by the Court for holding such meeting or meetings, or at which meeting or meetings or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion for and in the name of claimant to vote for or against any proposal or resolution that may be then submitted under the acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of said bankruptcy, and for claimant to appoint such trustee or trustees and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also to accept or reject any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due claimant under any composition or otherwise and for any other purpose whatsoever in the interest of claimant to perform

acts and execute consents and documents with full power of substitution, and claimant does hereby revoke any and all prior powers of attorney that may have been given by claimant.

**DAVID DOWNEY**

Treasurer, Partner, or  
Individual

**DOWNEY WALLPAPER AND  
PAINT CO.**

Firm Name

Subscribed and sworn to before me this 15 day of December, A. D. 1938, and also acknowledged on this date by the subscriber, who is personally known to me.

(Seal)

**LOUISE BISHOP**

Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed Dec. 21, 1938. Hugh L. Dickson, Referee.

[Title of District Court and Cause.]

**PROOF OF DEBT DUE**

At Los Angeles, in the Southern District of California on the tenth day of May, 1939, came Robert W. Williams of Los Angeles, County of Los Angeles, State of California and made oath and says:

That he is a member of the firm of Price, Waterhouse & Co., a copartnership consisting of himself and I. Graham Pattinson and others, that he exe-

cuted the subjoined letter of attorney on behalf of said copartnership; and that he is authorized thereto by said copartnership on whose behalf he acts.

That the said Downey Wallpaper and Paint Company, the person against whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to said claimant, in the sum of Four hundred fifty and 00/100 (\$450.00)..... Dollars; that the consideration of said debt is as follows:

For accounting services rendered in July and August 1938 that no part of said debt has been paid, no note has been received, nor judgment rendered for said indebtedness, nor for any part thereof, except as hereinabove stated; that there are no setoffs or counterclaims to the same; that the purchase price of said goods, wares and merchandise became due on the dates set out on said itemized bill; and that said claimant has not, nor has any other person by claimant's order, or to the knowledge or belief of deponent, or for claimant, had or received any manner of security whatever for said debt.

Said claimant hereby constitutes and appoints T. G. Douglas or their representatives and each of them, its true and lawful attorney in fact to represent said claimant in said matter, with full authority to attend the meeting or meetings of creditors of the bankrupt aforesaid at a Court of Bankruptcy, wherever advised or directed to be holden, on the



day and at the hour appointed and notified by said Court of said matter, or at such other time and place as may be appointed by the Court for holding such meeting or meetings, or at which meeting or meetings or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion for and in the name of claimant to vote for or against any proposal or resolution that may be then submitted under the acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of said bankruptcy, and for claimant to appoint such trustee or trustees and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also to accept or reject any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due claimant under any composition or otherwise and for any other purpose whatsoever in the interest of claimant to perform acts and execute consents and documents with full power of substitution, and claimant does hereby revoke any and all prior powers of attorney that may have been given by claimant.

**PRICE, WATERHOUSE & CO.**

Firm Name

By **ROBERT W. WILLIAMS**

(a partner)

Subscribed and sworn to before me this 10th day of May, A. D. 1939, and also acknowledged on this date by the subscriber, who is personally known to me.

(Seal)

**ELSIE EVERSHED**

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires November 20, 1939.

530 West Sixth Street

Los Angeles

Downey Wallpaper and Paint Company,

821 South Flower Street,

Los Angeles, California.

May 10, 1939.

To Price, Waterhouse & Co., Dr.

For services rendered between July 1, 1938 and August 17, 1938 in an examination of the accounts relating to the year ending June 30, 1938 and reporting thereon by letter dated August 17, 1938; preparation of Federal capital stock tax return for the year ending June 30, 1938..... \$450.00

ITEMIZATION OF CHARGES

Manager:

	Hours	Days	Rate	Amount
July 1 to 15, 1938	6			
July 16 to 31, 1938	1½			
August 17 1938	1			
	<u>8½</u>	1½	\$50	\$ 60.00

Senior accountant:

July 1 to 15, 1938	37			
July 16 to 31, 1938	49			
August 15 and 17, 1938	5			
	<u>91</u>	13	35	455.00

Clerks and stenographers:

July 1 to July 15, 1938	2			
July 16 to July 31, 1938	1			
August 17, 1938	2½			
	<u>5½</u>	¾	10	7.50

Total \$522.50

Bill rendered for \$450.00

[Endorsed]: Filed May 16, 1939. Hugh L. Dickson, Referee.

[Title of District Court and Cause.]

PROOF OF DEBT DUE BLAKE, MOFFITT &  
TOWNE FOR \$25.89

At Los Angeles, in the Southern District of California, on the 12th day of December, 1938,

came Walter W. Huelat of Los Angeles, County of Los Angeles, State of California, attorney or authorized agent of Blake, Moffitt & Towne, of San Francisco, in the County of San Francisco, and State of California, and made oath and says:

That the said Wilbur J. Downey, the person by whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to the said claimant, in the sum of Twenty five and 89/100 Dollars; that the consideration of said debt is as follows: Goods, wares and merchandise sold and delivered within two years last past by the claimant, an itemized bill of which, marked Exhibit "A," is hereto annexed and referred to as a part hereof. Statement and invoice attached; that no part of said debt has been paid; no note has been received, nor judgment rendered for said indebtedness, nor for any part thereof, except as hereinabove stated; that there are no setoffs or counterclaims to the same; that the purchase price of said goods, wares and merchandise became due on the dates set out on said itemized bill; and that this deponent has not, nor has any person by his order, or to this deponent's knowledge or belief, for his use had or received any manner of security for said debt whatever. And this deponent further says, that this deposition can not be made by the claimant in person because principal is without the Southern District of California and that he is duly authorized by his principal to make this affidavit, and that it is within his knowl-



edge that the aforesaid debt was incurred as and for the consideration above stated, and that such debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied.

**BLAKE, MOFFITT  
& TOWNE.**

**WALTER W. HUELAT,**  
Authorized Agent-Attorney.

Subscribed and sworn to before me this 16th day of December, 1938.

(Seal)

**L. T. COONEY,**

Notary Public in and for the County of  
Los Angeles, State of California.

My Commission expires July 25, 1939.

— LETTER OF ATTORNEY —

To Craig & Weller, J. P. Keleher or Thos. S. Tobin.

The undersigned hereby authorize you or any of you, to attend the meeting or meetings of creditors of the bankrupt aforesaid at a Court of Bankruptcy, wherever advertised or directed to be holden, on the day and at the hour appointed and notified by said Court in said matter, or at such other time and place as may be appointed by the Court for holding such meeting or meetings, or at which meeting or meetings, or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion for and in the name of the undersigned to vote for or against any proposal or resolution that may be

then submitted under the Acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of said bankrupt, and for the undersigned to assent to such appointment of trustee, and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also to accept any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due the undersigned under any composition, and for any other purpose whatsoever in the interest of the undersigned, with full power of substitution, and the undersigned does hereby revoke any and all prior powers of attorney that may have been given by the undersigned.

In witness whereof, the name and seal of the undersigned is hereby affixed the.....day of December, A. D. 1938.

X..... (Seal)

Signature of Claimant.

By WALTER W. HUELAT,

Authorized Agent-Attorney.

Signed, sealed and delivered in the presence of

.....  
Acknowledged before me this 16th day of December, A. D. 1938, by Walter W. Huelat, who is personally known to me, for and on behalf of said claimant.

(Seal)

L. T. COONEY,

Notary Public in and for the County of  
Los Angeles, State of California.

My Commission expires July 25, 1939.

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STATEMENT

Phone MUTual 4151

Blake, Moffitt & Towne

Paper

242 So. Los Angeles St.—Los Angeles

San Francisco—Seattle      Portland—Los Angeles

Sacramento—Oakland—Fresno

San Jose—San Diego—Tacoma

Stockton—Boise—Salem      Phoenix—Tucson

W. J. Downey

821 S. Flower

Los Angeles, Calif.

	Charges	Balance
November 1, 1938		
1      111918	25 89	25 89

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BLAKE, MOFFITT & TOWNE

Paper

242 So. Los Angeles St.—Los Angeles

Telephone MUTual 4151

San Francisco—Seattle      Portland—Los Angeles

Sacramento—Oakland—Fresno

San Jose—San Diego—Tacoma

Stockton—Boise—Salem      Phoenix—Tucson

Sold to

W. J. Downey

821 S. Flower

Los Angeles, Calif.

Date 11-1-38

Our Charge No. 99939

Customer's Order No.

Terms: 2% cash discount if paid on or before the 15th of the next succeeding month—~~net~~ and past due thereafter.

Interest will be charged on overdue accounts.

1 M Pieces 18x21 450 pt Clear

Sylphrap

.0685 M

25.89

In addition to the contract or agreed price, buyer agrees to pay to the seller an amount equivalent to any tax or charge whatsoever, affecting the merchandise herein covered, which may heretofore or hereafter be imposed by law upon the sale of all or any portion of merchandise sold or delivered under this agreement and for which the seller shall be liable. Such additional amount shall become due and payable, net, at the time the invoice for the merchandise shall become due and payable.

No claims will be allowed after paper has been cut, ruled or printed—Prices subject to change without notice.

[Endorsed]: Filed Dec. 21, 1938. Hugh L. Dickson, Referee.

[Title of District Court and Cause.]

PROOF OF UNSECURED DEBT OF FRANK  
S. HUTTON FOR \$1000

At Los Angeles, in said Southern District of California, on the 19th day of December, A. D. 1938, came Frank S. Hutton, of Los Angeles, in the County of Los Angeles, and State of California,



in said District of California, and made oath and says:

That the said Wilbur J. Downey, the person for whom a petition for adjudication of Bankruptcy has been filed, was at and before the filing of said petition, and still is, justly and truly indebted to the said deponent in the sum of One Thousand (\$1000.00) Dollars; that the consideration of said debt is as follows:

Continuous legal service rendered from 1934 up to date of bankruptcy; that no part of said debt has been paid; no note has been received for said indebtedness, nor for any part thereof, nor has any judgment been rendered thereon, except as hereinabove stated; that there are no set-offs or counter-claims to the same, and that deponent has not, nor has any person by his order, or to his knowledge or belief, for his use, had or received any manner of security for said debt whatever. Your claimant avers that every part of the obligation herein sought to be proved is free from usury as defined by the laws of the place where the said debt was contracted.

FRANK S. HUTTON,

Creditor.

Subscribed and sworn to before me this 19th day of December, 1938.

(Seal)

MARIE E. LIDMAN,

Notary Public in and for the County of  
Los Angeles, State of California.

[Endorsed]: Filed Dec. 21, 1938. Hugh L.  
Dickson, Referee.

[Title of District Court and Cause.]

**PROOF OF PRIORITY CLAIM FOR TAXES**

Retailers Permit Nos. AA7793, AA10382

On the.....day of June, 1939, came J. J. Campbell and made oath and said:

1. That he is one of the authorized and acting agents of the State Board of Equalization of the State of California, and as such he is qualified and empowered to make this claim on behalf of the said board;

2. That he is informed and believes the said Wilbur J. Downey aka W. J. Downey, Bankrupt, was, at or before the filing of the bankruptcy petition, and is now justly and truly indebted to the State of California in the sum of Two hundred three and 07/100 Dollars (\$203.07);

3. That the consideration of the debt is a tax duly levied and assessed under the provisions of the "Retail Sales Tax Act of 1933" and interest, itemized as follows:

See schedule of sales tax and interest due, attached.

4. That this claim is entitled to the PRIORITY provided by Sec. 64-a of the Bankruptcy Act;

5. That the due date for the said tax is past; that no part of the said tax has been paid except as above stated; that there are no set-offs or counterclaims to the same; that no note or judgment has been recovered therefor; that deponent has not, nor has any person, to his knowledge or belief, for the

use or benefit of the State of California, had or received any manner of security for the said tax or interest or penalty whatever, EXCEPT as follows:

J. J. CAMPBELL,

Sales Tax Administrator.

STATE BOARD OF  
EQUALIZATION

Sales Tax Division.

Subscribed and sworn to before me this 5 day of  
June, 1939.

(Seal)

BETH RICE,

Notary Public in and for the County of  
Los Angeles, State of California.

Make all checks payable to "State Board of  
Equalization" and forward to the Sales Tax Di-  
vision, State Board of Equalization, Sacramento,  
California.

SCHEDULE OF SALES TAX, ETC., DUE

Permit #AA7793

1st Quarter 1936

Tax Due \$359.24 Tax Paid \$351.98 Bal. Due	\$ 7.26
Interest at 12% per annum from _____ to _____	\$ _____
Interest at 1/2 of 1% per month or fraction thereof from 4/15/36 to 6/15/39	\$ 1.38
Penalty _____	\$ _____

2nd Quarter 1936

Tax Due \$508.79 Tax Paid \$502.35 Bal. Due	\$ 6.44
Interest at 12% per annum from _____ to _____	\$ _____
Interest at 1/2 of 1% per month or fraction thereof from 7/15/36 to 6/15/39	\$ 1.13
Penalty _____	\$ _____

## 3rd Quarter 1936

Tax Due \$85.54 Tax Paid \$90.09 Bal. Due \$ 4.55 Cr.

Interest at 12% per annum from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Interest at  $\frac{1}{2}$  of 1% per month or fraction thereof  
from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Penalty \_\_\_\_\_ \$ \_\_\_\_\_

## 4th Quarter 1936

Tax Due \$76.90 Tax Paid \$80.69 Bal. Due \$ 3.79 Cr.

Interest at 12% per annum from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Interest at  $\frac{1}{2}$  of 1% per month or fraction thereof  
from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Penalty \_\_\_\_\_ \$ \_\_\_\_\_

## 1st Quarter 1937

Tax Due \$89.57 Tax Paid \$93.66 Bal. Due \$ 4.09 Cr.

Interest at 12% per annum from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Interest at  $\frac{1}{2}$  of 1% per month or fraction thereof  
from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Penalty \_\_\_\_\_ \$ \_\_\_\_\_

## 2nd Quarter 1937

Tax Due \$211.62 Tax Paid \$216.54 Bal. Due \$ 4.92 Cr.

Interest at 12% per annum from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Interest at  $\frac{1}{2}$  of 1% per month or fraction thereof  
from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Penalty \_\_\_\_\_ \$ \_\_\_\_\_

## 3rd Quarter 1937

Tax Due \$107.61 Tax Paid \$112.44 Bal. Due \$ 4.83 Cr.

Interest at 12% per annum from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Interest at  $\frac{1}{2}$  of 1% per month or fraction thereof  
from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Penalty \_\_\_\_\_ \$ \_\_\_\_\_

## 4th Quarter 1937

Tax Due \$111.10 Tax Paid \$115.63 Bal. Due \$ 4.53 Cr.

Interest at 12% per annum from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Interest at  $\frac{1}{2}$  of 1% per month or fraction thereof  
from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Penalty \_\_\_\_\_ \$ \_\_\_\_\_



## 1st Quarter 1938

Tax Due \$77.96 Tax Paid \$80.51 Bal. Due \$ 2.55 Cr.

Interest at 12% per annum from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Interest at  $\frac{1}{2}$  of 1% per month or fraction thereof  
from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Penalty \_\_\_\_\_ \$ \_\_\_\_\_

## 2nd Quarter 1938

Tax Due \$64.66 Tax Paid \$67.28 Bal. Due \$ 2.62 Cr.

Interest at 12% per annum from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Interest at  $\frac{1}{2}$  of 1% per month or fraction thereof  
from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Penalty \_\_\_\_\_ \$ \_\_\_\_\_

FORWARD \$ 15.67 Cr.

BROUGHT FORWARD \$ 15.67 Cr.

## 3rd Quarter 1938

Tax Due \$58.41 Tax Paid \$60.30 Bal. Due \$ 1.89 Cr.

Interest at 12% per annum from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Interest at  $\frac{1}{2}$  of 1% per month or fraction thereof  
from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Penalty \_\_\_\_\_ \$ \_\_\_\_\_

## 4th Quarter 1938 to November 10, 1938—

Tax Due \$45.19 Tax Paid \$ None Bal. Due \$ 45.19

Interest at 12% per annum from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Interest at  $\frac{1}{2}$  of 1% per month or fraction thereof  
from 11/25/38 to 6/15/39 \$ .38

Penalty \_\_\_\_\_ \$ \_\_\_\_\_

Permit AA10382

## 3rd Quarter 1936

Tax Due \$408.98 Tax Paid \$410.83 Bal. Due \$ 1.85 Cr.

Interest at 12% per annum from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Interest at  $\frac{1}{2}$  of 1% per month or fraction thereof  
from 10/15/36 to 6/15/39 \$ .24 Cr.

Penalty \_\_\_\_\_ \$ \_\_\_\_\_

## 4th Quarter 1936

Tax Due \$425.99 Tax Paid \$429.90 Bal. Due \$ 3.91 Cr.

Interest at 12% per annum from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Interest at  $\frac{1}{2}$  of 1% per month or fraction thereof  
from 1/15/37 to 6/15/39 \$ .51 Cr.

Penalty \_\_\_\_\_ \$ \_\_\_\_\_

## 1st Quarter 1937

Tax Due \$403.44 Tax Paid \$358.21 Bal. Due \$ 45.23

Interest at 12% per annum from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Interest at  $\frac{1}{2}$  of 1% per month or fraction thereof  
from 4/15/37 to 6/15/39 \$ 5.88

Penalty \_\_\_\_\_ \$ \_\_\_\_\_

## 2nd Quarter 1937

Tax Due \$346.55 Tax Paid \$348.56 Bal. Due \$ 2.01 Cr.

Interest at 12% per annum from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Interest at  $\frac{1}{2}$  of 1% per month or fraction thereof  
from 7/15/37 to 6/15/39 \$ .23 Cr.

Penalty \_\_\_\_\_ \$ \_\_\_\_\_

## 3rd Quarter 1937

Tax Due \$400.34 Tax Paid \$397.47 Bal. Due \$ 2.87

Interest at 12% per annum from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Interest at  $\frac{1}{2}$  of 1% per month or fraction thereof  
from 10/15/37 to 6/15/39 \$ .29

Penalty \_\_\_\_\_ \$ \_\_\_\_\_

## 4th Quarter 1937

Tax Due \$320.39 Tax Paid \$323.56 Bal. Due \$ 3.17 Cr.

Interest at 12% per annum from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Interest at  $\frac{1}{2}$  of 1% per month or fraction thereof  
from 1/15/37 to 6/15/39 \$ .27 Cr.

Penalty \_\_\_\_\_ \$ \_\_\_\_\_

## 1st Quarter 1938

Tax Due \$364.55 Tax Paid \$278.90 Bal. Due \$ 85.65

Interest at 12% per annum from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Interest at  $\frac{1}{2}$  of 1% per month or fraction thereof  
from 4/15/38 to 6/15/39 \$ 6.00

Penalty \_\_\_\_\_ \$ \_\_\_\_\_

## 2nd Quarter 1938

Tax Due \$371.07 Tax Paid \$329.20 Bal. Due \$ 41.87

Interest at 12% per annum from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Interest at  $\frac{1}{2}$  of 1% per month or fraction thereof  
from 7/15/38 to 6/15/39 \$ 2.30

Penalty \_\_\_\_\_ \$ \_\_\_\_\_

FORWARD \$ 205.91

3rd Quarter 1938

BROUGHT FORWARD \$ 205.91

Tax Due \$348.89 Tax Paid \$351.79 Bal. Due \$ 2.90 Cr.

Interest at 12% per annum from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Interest at  $\frac{1}{2}$  of 1% per month or fraction thereof  
from 10/15/38 to 6/15/39 \$ .12 Cr.

4th Quarter 1938 to November 10, 1938—

Tax Due \$170.69 Tax Paid \$172.18 Bal. Due \$ 1.49 Cr.

Interest at 12% per annum from \_\_\_\_\_ to \_\_\_\_\_ \$ \_\_\_\_\_

Interest at  $\frac{1}{2}$  of 1% per month or fraction thereof  
from 11/25/38 to 1/9/39 \$ 1.67

TOTAL TAX AND INTEREST DUE \$ 203.07

To which amount the Trustee and/or Referee shall compute and add thereto additional interest at the rate of one-half of one per cent per month or fraction thereof as follows:

On \$185.41 from June 15, 1939, to date of payment.

INTEREST IS REQUIRED TO BE COMPUTED AND PAID ON TAXES TO DATE OF PAYMENT, and trustees who fail to comply will be held PERSONALLY liable, together with the sureties on their bonds. Trustees are earnestly requested to comply with the law in this respect. In re Kallak, 147 Fed. 276.

The rate of interest provided for in the California Retail Sales Tax Act of 1933, Chap. 1020, Stats. 1933, as amended, Chaps. 351, 355 and 357, Stats. 1935, is not a penalty but constitutes interest allowable under Sec. 57-J of the Bankruptcy Act on authority of United States v. Childs, 266 U. S. 304.

[Endorsed]: Filed June 5, 1939. Hugh L. Dickson, Referee.

[Title of District Court and Cause.]

At the city of Los Angeles, County of Los Angeles, State of California, on the 4th day of May, 1939 came John R. Quinn, and made oath and says:

That he is the duly elected qualified and acting Assessor of the County of Los Angeles, State of California, a body corporate and politic:

That the said Downey Wallpaper and Paint Co. a corporation against whom a petition for adjudication in bankruptcy has been filed, was at 12 o'clock noon of the first Monday in March, 1939 the owner of the following described personal property:

Fixtures and Merchandise at 821 South Flower Street \$1600.

That since that time and prior to the first Monday in July, 1939 the above mentioned John R. Quinn, as Assessor of the County of Los Angeles, has duly and regularly assessed against said property, a tax in the sum of \$83.73; that said tax is a lien upon the above described property and the said John R. Quinn, on behalf of the County of Los Angeles, respectfully petitions this court for its order directing the payment of said tax as a prior lien upon said property. Your claimant avers that every part of the obligation herein sought to be proved is free from usury as defined by the laws of the place where said debt was contracted.

JOHN R. QUINN,

County Assessor.

L. M. WEST,

Deputy.



Subscribed and sworn to before me this 4th day of May, 1939.

(Seal)

L. E. LAMPTON,

County Clerk.

By J. STANLEY BRILL,

Deputy.

[Endorsed]: Filed May 11, 1939. Hugh L. Dickson, Referee.

[Title of District Court and Cause.]

PROOF OF DEBT

Dun & Bradstreet, Inc.

Amount of Debt, \$59.33

United States of America,  
Southern District of New York—ss.

At the above District, in the County of New York, State of New York, at the date hereinafter set forth came Thurlow W. Cunliffe, residing at Pelham, Westchester County, New York, and says

I.

That he is an officer of Dun & Bradstreet, Inc., a Corporation duly and legally organized and authorized to transact business. That he resides at the place above mentioned. That he is Secretary of the said Corporation. That the seal affixed hereto is the seal of said Corporation.

Said Corporation is hereinafter designated as the Claimant.

## II.

That the above named Bankrupt was at and before the time of the filing of the petition in bankruptcy herein and still is justly and truly indebted to said claimant in the sum of \$59.33. That the consideration of said debt is money due and owing under a written contract hereto annexed marked "Exhibit A", and made between the above named Bankrupt and the aforesaid Dun & Bradstreet, Inc.

That said amount is justly due and owing. That no part thereof has been paid. That there are no offsets or counterclaims thereto. That deponent has not, nor has any person for or on behalf of said claimant, or to deponent's knowledge or belief for the use or benefit of said claimant, had or received any security for said debt whatever. That no judgment has been rendered therefor or any part thereof, nor has any note or other evidence of said debt been received except such note or evidence of said debt, if any, as is attached to this document, except that the filing of this claim is not to be construed as a waiver of the right of the claimant to follow any of its property or proceeds thereof into the hands of whomsoever it may be, including the receiver and trustee in bankruptcy provided same was delivered through fraud or misrepresentation, or as a waiver of any other right of action or any other right that claimant has or may have against the Bankrupt, the Receiver or Trustee or

any other person.

(Seal)

T. W. CUNLIFFE,

(L. S.) A

(Individual Name)

Secretary

DUN & BRADSTREET, INC.,

(L. S.) B

Sworn to before me this 28th day of November, 1938, said subscriber being known to me to be the person described in and who signed and swore to the above instrument and duly acknowledged that he executed the same.

(Seal)

JOHN A. DAVISON,

Notary Public, Queens Co. No. 356. Certificate filed in New York Co. No. 191.

Commission Expires March 30, 1939.

Notarial Acknowledgment for Corporation

State of New York,

County of New York—ss.

On the 28th day of November, in the year 1938, before me personally came Thurlow W. Cunliffe, to me known, who being by me duly sworn, did depose and say that he resides in the City of Pelham, County of Westchester; that he is the Secretary of Dun & Bradstreet, Inc., the corporation described in and which executed the above instrument; that he knows the seal of said corporation, that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of

the board of directors of said corporation, and that he signed his name thereto by like order.

(Notary Seal) JOHN A. DAVISON,  
Notary Public, Queens Co. No. 356. Certificate filed  
in New York Co. No. 191.

Commission Expires March 30, 1939.

### EXHIBIT A

Dun & Bradstreet, Inc.  
Offices throughout the World

### TERMS OF SUBSCRIPTION TO DUN & BRADSTREET, INC.

The Undersigned hereby employs Dun & Bradstreet, Inc. to furnish credit reports on individuals, partnerships and corporations engaged in mercantile or commercial business in the territory covered by the Reference Books herein specified, for the term beginning Sept. 1st, 1938, and ending Aug. 31st, 1939, and agrees to pay in advance One Hundred Sixty Five Dollars (\$165.00).

If the reports requested exceed a maximum of 50 we agree to pay on demand for additional reports at the rate of \$1.25 each.

To facilitate the service Dun & Bradstreet, Inc. is to loan to the Undersigned its Reference Book designated as Number Ten, Editions of:

Sept., 1938. Jan., 1939. May, 1939.

It is further expressly agreed by the Undersigned:

(1) That all information, whether printed,



written or oral, submitted in answer to regular or special inquiry or voluntarily furnished by Dun & Bradstreet, Inc., its officers, agents or employees to the Undersigned, shall be held in strict confidence, and shall never be revealed or made accessible in any manner whatever to the persons reported upon or to any others.

(2) That the Undersigned will neither request information for the use of other persons or concerns, nor permit it to be done under this subscription.

(3) That this agreement covers service to the Undersigned at only a single place of business, unless otherwise stated, and that all of the Reference Books loaned at any time shall be kept and used only at the single place of business specified in this subscription, and shall be returned to the Company without further notice upon receipt by the Undersigned of any subsequent edition or at the expiration of this subscription.

(4) That the said Company does not guarantee the correctness of the aforesaid information whether printed, written or oral.

(5) That the said Company shall not be liable for any loss or injury caused by the neglect or other act or omission of said Company or any of its officers, agents or employees in procuring, collecting and/or communicating said information, or for delay in delivery of the Reference Book due to strikes, fires or contingencies beyond its control.

(6) That the conditions and obligations of this

agreement apply from the date of signing this contract to all information, including Reference Books furnished at any time to the Undersigned, and whether relating to concerns located within or without said territory.

(7) That the Company reserves the right to reject or terminate this subscription at any time and retake the Reference Book upon refund of the unearned portion of the above mentioned consideration.

(8) If the cost of the service under this contract is increased as a result of measures prescribed by Governmental authority, or by any other cause, then the terms of this contract for its unexpired period may be revised by Dun & Bradstreet, Inc., to such extent as in its judgment may be necessary to cover the increased costs, in such event, however, the subscriber shall have the option of continuing the contract on the revised basis, or of discontinuing the service, and upon such discontinuance shall be entitled to a refund of the unearned portion of the above mentioned consideration and thereupon shall return the Reference Book.

(9) That the conditions of this subscription, as set forth above, embody all the agreements and the understandings of every nature made concerning it by said Company or its agents or employees acting in its behalf either orally or in writing, and that the authority to modify, alter or amend this subscription or any portion thereof, after being signed, rests solely with an authorized official of

Dun & Bradstreet, Inc., and if any change is made  
it must be in writing.

Payable \$82.50 1-1-39

\$82.50 6-1-39

Name—W. J. Downey

Individual Signing—W. J. Downey

Mailing Address—821 S. Flower St.

Business—Oil Cloth, Wall Coverings

[Illegible]

Date Signed—Sept. 26th, 1938.

Salesman—A. D. Kinne

Class of Sub'n. Code

Taken by ADK

Sub's Number 5318

Renewal ✓

O. K. By LC

9/26/38 LC

9-27-38 MM

9-29-38 REB

Dun & Bradstreet, Inc.

The Mercantile Agency

730 South Los Angeles Street

Los Angeles, Cal., Nov. 22, 1938

To W. J. Downey,

821 So. Flower St.,

Los Angeles, Calif.

Usage on Annual Subscription commencing 9/1/38

21 reports @ 1.00 each

21 00

1 #10 Reference Book

38 33

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59 33

[Endorsed]: Filed Dec. 7, 1938. Hugh L. Dick-  
son, Referee. C. M. Commins, Clerk. CD.

[Title of District Court and Cause.]

STATEMENT OF CLAIM FOR TAXES DUE  
THE UNITED STATES

Comes Nat Rogan, Collector of Internal Revenue for the Sixth Collection District of California, a duly authorized agent for the United States in its behalf, and says that above-named bankrupt is justly and truly indebted to the United States of America for Internal Revenue taxes as follows:

Nature of Tax	Year or Taxable period ended	Amount of Tax	Interest	
			Assessed	Accrued
Income	1937 (add'l)	\$46.44	5.76	.26
Amount due as of 11-16-39			\$52.46	

Further interest will accrue at the rate 6% per annum on the amount of tax and assessed interest namely, \$52.20, from November 16, 1939 to the date on which payment thereof is made.

That the above tax was assessed by the Commissioner of Internal Revenue on \_\_\_\_\_, 19\_\_\_\_; assessment reference Sept. 520064/39 List.

That no part of said taxes or interest has been paid, but the same are now due and payable at the office of said Collector of Internal Revenue at Los Angeles, California, and no security therefor is held by the United States and there are no set-offs or counter-claims.

That this claim is entitled to be paid before all other claims, the priority of the United States for the payment of taxes being fully determined by



Section 3466 of the Revised Statutes and Section 64(a) of the Bankruptcy Act.

And attention is hereby called to Section 3467 of the Revised Statutes which provides that every executor, administrator or assignee, or other person who pays any debt due by the person or estate from whom or for whom he acts, before he satisfies and pays the debts due the United States from such person or estate, shall be answerable in his own person and estate for the debts so due the United States, or for so much thereof as may remain due and unpaid.

Dated this 24th day of October, 1939.

NAT ROGAN

Collector of Internal Revenue for the Sixth Collection District of California.

Subscribed and sworn to before me this 24th day of October, 1939.

[Seal] T. G. ALBRIGHT

Notary Public in and for the County of Los Angeles, State of California.

My Commission Expires October 22, 1940.

[Written in pencil]: Time expired.

[Endorsed]: Filed Oct. 30, 1939. Hugh L. Dickson, Referee.

[Title of District Court and Cause.]

**PROOF OF DEBT  
HARDWARE MUTUAL CASUALTY CO.**

Amount of Claim, \$49.43

State of Wisconsin,  
County of Portage—ss.

At Stevens Point in the Western District of Wisconsin, on the 5th day of September, 1939, came R. E. Evans of Stevens Point in the county of Portage in the Western district of Wisconsin and made oath

(3) That he is a duly authorized officer of the Hardware Mutual Casualty Company corporation incorporated by and under the laws of the state of Wisconsin and carrying on business at Stevens Point in the county of Portage and state of Wisconsin and that he is duly authorized to make this proof, and to execute the power of attorney hereinafter contained.

(4) That the said Downey Wall Paper & Paint Co., the person by whom a petition for adjudication of bankruptcy has been filed, was, at or before the filing of said petition, and still is, justly and truly indebted to said Hardware Mutual Casualty Company, Name of Creditor, in the sum of Forty-nine & 43/100 dollars (\$49.43)

(5) That the consideration of said debt is as follows: Standard Workmen's Compensation policy

813104 issued July 7, 1938. Additional premium now due based on audit made June 30, 1939.

(5a) That the date of maturity of said debt is not open account.

(5b) That no note has been received nor judgment recovered therefor (except—no exceptions.

(6) That no part of said debt has been paid (except—no exceptions.

(7) That there are no set-offs or counter claims to the same (except—no exceptions.

(8) That said creditor has not, nor has any person by order of said creditor, or to the knowledge or belief of said deponent for the use of said creditor, received any manner of security for said debt whatever (except the following which are the only securities held by said creditor for said debt—no exceptions.

[Written in pencil]: Time expired.

In witness whereof said creditor has hereunto signed its name and affixed its seal, when signing the deposition preceding, the 5th day of September, 1939.

..... (L. S.)

Individual executing

ALWAYS sign here.

• **HARDWARE MUTUAL**

**CASUALTY CO.** (L. S.)

Creditor.

By **R. E. EVANS.**

Individual executing

ALWAYS sign here.

Its Treasurer.

In Presence of \_\_\_\_\_

Subscribed, sworn to before me this 5th day of  
September, 1939, by the subscriber who is person-  
ally known to me.

(Seal)

J. F. KORNELY,  
Notary Public.

My Commission expires August 29, 1943.

**INVOICE**

Pacific Department  
Hardware Mutual Casualty Company  
417 Montgomery Street  
San Francisco, California

Downey Wall Paper & Paint Co.  
821 So Flower St  
Los Angeles Calif

Terms—Net cash. This premium is due on the  
date shown on this invoice.

If you desire the monthly budget plan check  
here ☐ and return this invoice.

Please return this invoice or show this account  
number on your remittance. It prevents errors on  
your account.

B  
Account No.  
04-9184

Additional  
Earned Premium on Policy 813104  
From 7-7-38 to 4-27-39  
W C Audit

49.43

HO

Monthly Billing

A receipt will not be sent unless requested. Your canceled  
check will serve as a receipt.



Paul W. Sampsell

Liquidations

Bankruptcy

Insolvency

836 Board of Trade Building

111 West Seventh Street

Los Angeles

In the matter of

W. J. Downey,

Bankrupt

October 9th, 1939

Hon. Hugh L. Dickson,

Referee in Bankruptcy,

343 Federal Building,

Los Angeles, California

Dear Sir:

Herewith I hand to you Proof of Debt covering the claim of Hardware Mutual Casualty Company for \$49.43 against the above named bankrupt, which proof was received by me from them, and which I transmit to you, as required by General Order in Bankruptcy No. XXI (1).

Yours very truly,

PAUL W. SAMPSELL

Trustee.

[Endorsed]: Filed Oct. 11, 1939. Hugh L. Dickson, Referee.

[Title of District Court and Cause.]

**PROOF OF DEBT DUE CORPORATION.**

At Los Angeles in said District of Southern California on the thirtieth day of January 1939, came Orville R. Vaughn of Hillsborough, in the County of San Mateo and State of California, and made oath, and says that he is Assistant Treasurer of the Howard Automobile Company of Los Angeles, a Corporation, incorporated by and under the laws of the State of California, and carrying on business at 1601 Van Ness Avenue, in the County of San Francisco, and State of California and that he is duly authorized to make this proof, and says that the said Wilbur J. Downey, the person by (or against) whom a petition for adjudication of bankruptcy has been filed, was at and before the filing of the said petition, and still is justly and truly indebted to said Corporation in the sum of Forty-one and 53/100 (\$41.53) Dollars; that the consideration of said debt is as follows: Materials furnished and work and labor performed on the dates and for the agreed prices set forth in the statement of account, marked "Exhibit A," hereto attached and hereby made a part hereof; that no part of said debt has been paid (except.....); that there are no set-offs or counter-claims to the same (except.....)

That said debt.....due on the.....day of....., 19....., and is evidenced and set forth in the statement.....hereto attached marked "Exhibit A," and made a part hereof.

That said Corporation has not, nor has any person by its order, or to the knowledge or belief of said deponent, for its use, had or received any manner of security for said debt whatever. And deponent further says that no note has been received for such account nor any judgment rendered thereon.

ORVILLE R. VAUGHN,  
Assistant Treasurer of said  
Corporation.

Subscribed and sworn to before me, this 30th day of January, 1939.

(Seal) JEAN M. WINTERMANN  
Notary Public in and for the City and County of  
San Francisco, State of California.  
My commission expires October 16, 1942.

## EXHIBIT A

Howard Automobile Company  
of Los Angeles

1367 So. Figueroa Street  
Los Angeles, Calif.

PRospect 5011

Wilbur J. Downey,  
821 S. Flower St.,  
Los Angeles, Calif.

Please detach this portion and mail with remittance.

Terms Cash: If not paid on 10th of month following invoice,  
further accounts will be C.O.D.

Date	Store	Reference	Charges	Credits	Balance
1938		Balance end of last month			
Oct. 3		R07242	23.62		
10		R08356	19.91		43.53
18		JE3903		2.00	41.53

(Above described invoices are hereto attached)

Pay last amount in this column.

Remittance is requested to the above address.  
However, if more convenient, you may remit to the  
store where purchase was made.

Howard Automobile Company of Los Angeles.



*vs. Paul W. Sampsell*

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Please refer to Invoice No. 7242.

Howard Automobile Company of Los Angeles  
1367 S. Figueroa St., Los Angeles, Calif.  
Telephone PROspect 5011  
Agents and Distributors for  
"Buick" Automobiles

Sold to

W. J. Downey  
821 S. Flower  
Los Angeles, Calif.

Date: 10/3/38

Model: 38-41

Motor No.:

Frame No.:

Mileage: 18011

License: 73N87S

Billed by

Order No.

Work authorized by W. J. Downey Salesman

Operation  
Number

Description

Labor Materials

Repair right front fender	8.00	
Spot right front fender	3.00	
Remove rattle in dash	2.00	
Check radio	4.50	
Adjust brakes	2.00	
1 Bumper guard		1.50
2 Stop light bulbs		.70
6 qts. M. oil		1.80
Total—Materials		4.00
State Sales Tax		.12
Total—Labor		19.50

Total Charge 23.62

Net Cash—No Discount

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*Imperial Paper & Color Corp.*

Please refer to Invoice No. 8356.

Howard Automobile Company of Los Angeles  
 1367 S. Figueroa St., Los Angeles, Calif.  
 Telephone PRospect 5011  
 Agents and Distributors for  
 "Buick" Automobiles

Sold to

W. J. Downey  
 821 S. Flower  
 Los Angeles, Calif.

Date: 10/10/38

Model: 38-41

Motor No.:

Frame No.:

Mileage: 18610

License: 73N875

Billed by

Work authorized by

Order No.  
 Salesman

Operation  
 Number

Description

Labor Materials

Reline brakes,

10.50

True up 2 drums

2.20

1 Set lining

7.00

Total—Materials

7.00

State Sales Tax

.21

Total—Labor

12.70

Total Charge

19.91

Net Cash—No Discount

*vs. Paul W. Sampsell*

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Credit Memorandum

Telephone PROspect 5011

No. 3903

Howard Automobile Company  
of Los Angeles

Largest Distributors of Automobiles in the World  
1367 So. Figueroa Street, Los Angeles, Calif.

Credit to

Wilbur J. Downey  
821 S. Flower  
Los Angeles, Calif.

Date 10/18/38

Credit for brake adjustment (Relined R083561) 2.00

Terms: Net Cash. No Discount

Orville R. Vaughn  
Attorney at Law  
1601 Van Ness Avenue  
San Francisco

January 30, 1939.

Hon. Hugh L. Dickson,  
Referee in Bankruptcy,  
354 So. Spring Street,  
Los Angeles, California.  
Dear Sir:

I enclose claim of Howard Automobile Company  
of Los Angeles against Wilbur J. Downey, bank-  
rupt, Number 33121-M, in amount of \$41.53.

Very truly yours,

ORVILLE R. VAUGHN.

ORV:mb  
Enclosure

[Endorsed]: Filed Jan. 31, 1939. Hugh L. Dick-  
son, Referee. [85]

[Title of District Court and Cause.]

**PROOF OF PRIORITY CLAIM FOR TAXES**  
**Employer's Account No. 1-1571**

On the 3rd day of March, 1939, came Samuel L. Gold and made oath and said:

1. That he is one of the authorized and acting agents of the Unemployment Reserves Commission, and as such he is qualified and empowered to make this claim on behalf of the said Commission;

2. That he is informed and believes the said Wilbur J. Downey, Bankrupt, was, at or before the filing of the bankruptcy petition, and is now justly and truly indebted to the State of California in the sum of Nineteen and 14/100 Dollars (\$19.14);

3. That the consideration of the debt is a tax duly levied and assessed under the provisions of the Unemployment Reserves Act (Stats. 1935, Chapter 352, as amended in 1937), and interest, itemized as follows:

Plus interest on \$19.14 at \$.00629 per day from 2-1-39 to date of payment.

4. That this claim is entitled to the PRIORITY provided by Sec. 64-a of the Bankruptcy Act;

5. That the due date for the said tax is past; that no part of the said tax has been paid except as above stated; that there are no set-offs or counter-claims to the same; that no note or judgment has been recovered therefor; that deponent has not, nor has any person, to his knowledge or belief, for the use or benefit of the State of California, had or



received any manner of security for the said tax or interest or penalty whatever, EXCEPT as follows:

**SAMUEL L. GOLD,**

**Unemployment Reserves Commission.**

Subscribed and sworn to before me this 3rd day of March, 1939.

(Seal) **AMY B. WARNER,**

**Notary Public in and for the County of Sacramento,  
State of California.**

**Make All Checks Payable to the Unemployment Reserves Commission and Mail to the Department of Employment, Attention Rules and Regulations Section, 1025 P Street, Sacramento.**

**DE 273**

**[Endorsed]: Filed Mar. 6, 1939. Hugh L. Dickson, Referee.**

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**[Title of District Court and Cause.]**

**At the city of Los Angeles, County of Los Angeles, State of California, on the 4th day of May, 1939 came John R. Quinn, and made oath and says:**

**That he is the duly elected qualified and acting Assessor of the County of Los Angeles, State of California, a body corporate and politic:**

**That the said Wilbur J. Downey a person against whom a petition for adjudication in bankruptcy has been filed, was at 12 o'clock noon of the first**

Monday in March, 1939 the owner of the following described personal property:

Fixtures at 821 South Flower Street \$300.

That since that time and prior to the first Monday in July, 1939 the above mentioned John R. Quinn, as Assessor of the County of Los Angeles, has duly and regularly assessed against said property, a tax in the sum of \$15.69; that said tax is a lien upon the above described property and the said John R. Quinn, on behalf of the County of Los Angeles, respectfully petitions this court for its order directing the payment of said tax as a prior lien upon said property. Your claimant avers that every part of the obligation herein sought to be proved is free from usury as defined by the laws of the place where said debt was contracted.

JOHN R. QUINN,

County Assessor,

L. M. WEST,

Deputy Assessor for the

County of Los Angeles.

Subscribed and sworn to before me this May 4 1939.

(Seal)

L. E. LAMPTON,

County Clerk.

By J. STANLEY BRILL,

Deputy.

[Endorsed]: Filed May 11, 1939. Hugh L. Dickson, Referee.

[Title of District Court and Cause.]

**PROOF OF DEBT DUE.**

At New York, in the Southern District of New York, on the 5th day of December, 1938, came H. J. Hemingway, of the City of New York, County of New York, State of New York, and made oath and says:

That he is president of Standard Coated Products Corporation, a corporation incorporated by and under the laws of the State of New York, and carrying on business at Los Angeles, County of Los Angeles, State of California, which corporation is the creditor making this proof of debt.

That the said Wilbur J. Downey, also known as W. J. Downey, the person duly adjudicated a bankrupt herein on November 19, 1938, was at the date of the adjudication, as aforesaid, and still is, justly and truly indebted to said claimant, in the sum of \$104,000.00, together with interest on \$14,000.00 thereof from April 15, 1938, to November 19, 1938, the date of adjudication herein, at the rate of six per cent per annum, amounting to \$499.33, or a total sum of \$104,499.33; that the consideration of said debt is as follows: Goods, wares and merchandise sold and delivered to Wilbur J. Downey by The Standard Textile Products Company, claimant's predecessor in interest, at and prior to April 1, 1933. That the said The Standard Textile Products Company and the said Wilbur J. Downey executed an agreement in writing between themselves, dated April 1, 1933, under and by virtue of the



terms of which the said Wilbur J. Downey promised and agreed to pay said The Standard Textile Products Company for said merchandise so sold and delivered, as aforesaid, the total sum of \$125,060.72, as the liquidated and agreed value of the merchandise theretofore sold and delivered to him, all as more particularly set forth in said agreement. That said contract by its terms provided that contemporaneously therewith and as a part of the same transaction, and as evidence of the obligations assumed and agreed to be paid under and by virtue of said contract by said Wilbur J. Downey, that he should execute two demand promissory notes in favor of The Standard Textile Products Company, claimant's predecessor in interest, which said two promissory notes were so executed by him. Said agreement further provided that the said sums agreed to be paid therein should be paid by periodic payments to claimant's predecessor in interest of all of the net proceeds of a business to be conducted by said Wilbur J. Downey at 821 South Flower Street, Los Angeles, California, and further to be paid periodically by paying to claimant's predecessor all the proceeds of the liquidation of any and all assets or property of said Wilbur J. Downey from whatsoever source or from wheresoever acquired. That the originals of said agreement and of the notes executed to evidence the obligations of said agreement, as aforesaid, are attached hereto, marked Exhibits "A", "B", and "C", respectively, and made a part hereof by this reference.



That said Wilbur J. Downey paid on account of said indebtedness, and in the manner as prescribed by said agreement, the total sum of \$21,060.72, principal, together with interest on \$14,000.00 up to and including April 15, 1938, at the rate of six per cent per annum, leaving a balance due as of the date of bankruptcy as follows: \$14,000.00, together with interest thereon at the rate of six per cent per annum from April 15, 1938, to and including November 19, 1938, amounting to \$499.33; and the additional sum of \$90,000.00, without interest, or a total sum of \$104,499.33.

That on or about the 25th day of September, 1937, in the District Court of the United States, for the Southern District of New York, in a proceeding entitled "In the Matter of The Standard Textile Products Company, a corporation, in Proceedings for Relief of Debtors under Section 77B of the Bankruptcy Act, in Bankruptcy No. 60243," the Honorable Julian W. Mack, United States Circuit Judge presiding in said proceeding, by his order duly given and made, ordered the formation of the Standafd Coated Products Corporation, claimant herein, for the purpose of succeeding to and taking over all of the property, real, personal or mixed, of an Ohio corporation known as The Standard Textile Products Company, the corporation which executed the said agreement above described, Exhibit "A" hereto; that thereafter and pursuant to said order, and on or about the 27th day of Sep-

tember, 1937, claimant corporation was formed; and thereafter, and on or about the 29th day of September, 1937, the said Julian W. Mack, United States Circuit Judge, ordered the transfer and delivery of all of the property of said The Standard Textile Products Company, real, personal or mixed, to the said Standard Coated Products Corporation, claimant herein, each and all of said orders having been duly made in connection with the said reorganization above described. That thereafter, and on or about November 29, 1937, and pursuant to said order of the 29th day of September, 1937, all of the property, real, personal and mixed, of said The Standard Textile Products Company, a corporation, was transferred, assigned and delivered to the claimant herein, and that ever since said transfer and delivery claimant herein has been and is now the owner and holder of all of the property, real, personal and mixed, of the said The Standard Textile Products Company, including the obligations of the bankrupt, Wilbur J. Downey, herein set forth and described.

That prior to the adjudication in bankruptcy herein, and on or about the 9th day of November, 1938, claimant, as the successor in interest of The Standard Textile Products Company, terminated said contract, Exhibit "A", and demanded the payment of all of the sums of money due pursuant to said agreement, in accordance therewith; that ever since said date the entire amount of said sums of

money, to-wit, the total sum of \$104,000.00, together with interest on \$14,000.00 thereof at the rate of six per cent per annum from April 15, 1938, to date of bankruptcy, as aforesaid, has been and is now due, owing and unpaid from the said Wilbur J. Downey, bankrupt herein, to the Standard Coated Products Corporation, as successor to The Standard Textile Products Company, as aforesaid; that no part of said debt has been paid except as above noted; that no note has been received except as above recited, nor judgment rendered for said indebtedness, nor any part thereof; that there are no setoffs or counterclaims to the same; that the amounts above stated all became due on the 9th day of November, 1938, as hereinabove set out, and that said claimant has not, nor has any other person by claimant's order, or to the knowledge or belief of deponent, or for claimant, had or received any manner of security whatever for said debt.

Said claimant hereby constitutes and appoints Benjamin S. Parks and Herbert W. Kidd, or their representatives, and each of them, its true and lawful attorneys in fact to represent said claimant in said matter, with full authority to attend the meeting or meetings of creditors of the bankrupt aforesaid at a Court of Bankruptcy, wherever advised or directed to be holden, on the day and at the hour appointed and notified by said Court in said matter, or at such other time and place as may be appointed by the Court for holding such meeting or meetings,



or at which meeting or meetings or any adjournment or adjournments thereof may be held, and then and there from time to time, and as often as there may be occasion for and in the name of claimant to vote for or against any proposal or resolution that may be then submitted under the acts of Congress relating to bankruptcy; and in the choice of trustee or trustees of the estate of said bankruptcy, and for claimant to appoint such trustee or trustees and with like powers to attend and vote at any other meeting or meetings of creditors, or sitting or sittings of the Court, which may be held therein for any of the purposes aforesaid; also to accept or reject any composition proposed by said bankrupt in satisfaction of his debts, and to receive payment of dividends and of money due claimant under any composition or otherwise and for any other purpose whatsoever in the interest of claimant to perform acts and execute consents and documents with full power of substitution, and claimant does hereby revoke any and all prior powers of attorney that may have been given by claimant.

H. J. HEMINGWAY

President

Standard Coated Products Corporation

Subscribed and sworn to before me this 5th day of December, 1938, and also acknowledged on this date by the subscriber, H. J. Hemingway, who is personally known to me and who is known by me to be the president of Standard Coated Products



Company, claimant in the foregoing proof of debt.

[Seal] **ELLEN M. GRIFFIN**

Notary Public in and for the County of New York,  
State of New York.

Notary Public, Westchester Co. Certificates filed in  
N. Y. Co. Clk's No. 1037, Reg. No. 9-G-587.  
Bronx Co. Clk's No. 65, Reg. No. 208-G-39.

Commission expires March 30, 1939.

No. 72347

State of New York,  
County of New York—ss.

I, Archibald R. Watson, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county, do hereby certify, That said Court is a Court of Record, having by law a seal; that Ellen M. Griffin whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed instrument was at the time of taking the same a Notary Public acting in and for said county, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's Office of the County of New York a certified copy of his appointment and qualification as Notary Public for the County of Westchester with his autograph signature; that as such Notary Public he was duly authorized by the laws of the State of New York to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds

and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this state; and further, that I am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof or acknowledgement is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 6 day of Dec. 1938.

[Seal]

ARCHIBALD R. WATSON

Clerk

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EXHIBIT "A"

This Agreement, made and entered into this 1st day of April, 1933, by and between Standard Textile Products Company, a corporation duly organized and existing under and by virtue of the laws of the State of Ohio, hereinafter called party of the first part, and W. J. Downey, hereinafter called party of the second part;

Witnesseth:

Whereas, party of the second part has heretofore engaged in a general wall paper, paint and kindred lines of products business, under the registered fictitious firm name and partnership name of "Downey & Gotwals", at 821 South Flower Street, in the City of Los Angeles; and

Whereas, said firm has heretofore become indebted to party of the first part as of April 1, 1933, in the total sum of \$125,060.72; and

Whereas, said partnership firm was dissolved by party of the second part and the said Gotwals by mutual agreement on the 1st day of April, 1933; and

Whereas, pursuant to said agreement of dissolution, and in accordance therewith, party of the second part did agree to assume all of the liabilities of said partnership firm, including the indebtedness of said partnership firm to party of the first part as of April 1, 1933, with the exception of \$1300.00 thereof assumed by the said Gotwals; and

Whereas, pursuant to said dissolution agreement the said Gotwals did sell, assign and transfer unto party of the second part all of his right, title and interest in and to each and all of the assets of said partnership firm of every kind or character whatsoever, and whether real or personal, and wheresoever located; and

Whereas, party of the first part is desirous of retaining party of the second part as one of its Distributors in Southern California, in the territory hereinafter more particularly described, and upon the terms and conditions as hereinafter set forth, and party of the second part is desirous of being so retained;

Now, therefore, it is agreed by and between the parties hereto as follows:

(1) That party of the first part does hereby appoint party of the second part as one of its Distributors in the Southern California territory, said territory being particularly described as all points in California south of and including the Cities of San Luis Obispo and Fresno.



(2) That for and in consideration of party of the second part being appointed as one of the Distributing Agents of party of the first part, as hereinabove set forth, party of the second part does hereby agree:

(a) To assume and agree to pay all of the liabilities of the firm of Downey & Gotwals to party of the first part, excepting the sum of \$1300.00, said sum so assumed being in the total principal sum of \$125,060.72, and to be evidenced by two promissory notes, each note to be dated April 1, 1933, and each payable upon demand, one note to be in the principal sum of \$14,000.00, and to bear interest at the rate of six per cent per annum, and the other note to be in the principal sum of \$111,060.72, without interest, each of said notes to be in the usual form and to carry a provision for the payment of attorney's fees in the event of default;

(b) To conduct, during the life of this agreement, a place of business at 821 South Flower Street, in the City of Los Angeles, or such other suitable location as may be acceptable to both of the parties hereto; said business to be carried on under the name of "W. J. Downey", or such other name as shall be acceptable to both of the parties hereto;

(c) To pay to party of the first part for application upon party of the second part's notes provided for herein, proportionately to each, all of the net proceeds derived by party



of the second part from the operation of said business in excess of the actual operating overhead, including any money realized by party of the second part from the sale and/or liquidation of any or all of his assets, irrespective of whether derived from said business or not.

(d) To furnish to party of the first part on or before the 10th day of each calendar month a detailed profit and loss statement in the form and detail as per sample attached hereto, marked Exhibit "A", and made a part hereof by this reference; said statement to show in addition to the items provided for in said Exhibit "A" a detailed statement of all salaries and commissions paid, together with a detailed statement of the actual withdrawals during said month of party of the second part; it being hereby agreed by party of the second part that his withdrawals from said business shall never at any time or for any reason exceed the sum of Three Hundred Fifty Dollars (\$350.00) for any one calendar month; it being further agreed that for the year 1933 party of the second part's withdrawals from said business shall not exceed the total sum of Forty-two Hundred Dollars (\$4200.00), including all amounts heretofore withdrawn from said business by party of the second part;

(e) To at all times keep at second party's own cost and expense a good and sufficient set of books of account, including an accurate rec-

ord of all goods consigned to second party by first party, together with a monthly statement of the movement of all consigned goods in the same manner as heretofore kept by second party; a copy of such statement to be forwarded to first party monthly on or before the 10th of the succeeding month.

(3) Party of the first part does hereby agree to provide party of the second part with a consigned stock of its products which shall be sufficient to enable second party to properly carry on his business as a Distributor for first party, party of the first part to be the sole judge as to the amount of such consigned stock which shall be sufficient to carry on said business in accordance herewith.

(4) Party of the second part does hereby agree to provide warehouse facilities for all such consigned goods. It is further understood and agreed that party of the second part shall make such shipments from consigned goods to the accounts of party of the first part as shall be required or designated by first party, and shall handle such invoicing on behalf of first party as shall be required by first party on such accounts. For such consigned goods as shall be warehoused by second party for delivery to the customers of first party, and for second party's services in packing, shipping and invoicing to party of the first part's customers, first party does hereby agree to pay for all goods so stored, packed, shipped and invoiced to first party's customers, as follows:

White goods—4¢ per 12 yd. piece so delivered,  
Shelf Oilcloth\*—2¢ per 24 yd. piece so delivered,

Black goods—3% of the invoice price so delivered.

(5) Party of the first part hereby agrees to sell to party of the second part its full line of goods, at prices to be fixed from time to time hereafter by party of the first part. Prices, discounts and terms to be set from time to time hereafter by party of the first part.

(6) Second party until further notice from first party shall pay for all goods sold or withdrawn from first party's consigned stock during the next succeeding calendar month after its withdrawal. First Party and/or its duly authorized representative is hereby given the right of full and free access to its entire stock of consigned goods at any time during business hours for the purpose of inspection and taking of inventory, or for any other purpose whatsoever.

(7) Party of the second part does hereby agree that so long as he shall remain a Distributor of the products of party of the first part, not to handle or sell any goods that are similar to any products now made or which may hereafter be made by the party of the first part, and does hereby further agree not to in any manner act as representative of, or of the

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\*See letter May 3, 1933 from Atty. Benj S. Parks.

products of any firm, person, or corporation who may hereafter be a manufacturer of any line which shall in any manner compete with the products of party of the first part.

(8) It is understood and agreed that party of the first part does hereby reserve the right to terminate this contract and all arrangements made with party of the second part pursuant hereto; at any time, without notice.

In witness whereof, the parties hereto, first party by its officers thereunto duly authorized, have hereunto set their hands and seals the day and year first hereinabove written.

[Seal] STANDARD TEXTILE PRODUCTS  
COMPANY

By J. T. BROADBENT

President

By ALFRED POPE

Secretary

Party of the First Part

W. J. DOWNEY

Party of the Second Part

State of New York,  
County of New York—ss.

On this 17th day of April, in the year 1933, A. D., before me, Edgar Tallman, a Notary Public in and for said County and State, residing therein, duly commissioned and sworn, personally appeared J. T. Broadbent, known to me to be the President, and Alfred Pope, known to me to be the Secretary of



Standard Textile Products Company, the Corporation which executed the within and annexed instrument, and acknowledged to me that such Corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal in said County the day and year in this certificate first above written.

[Seal]                      EDGAR TALLMAN

Notary Public in and for said County and State.

Notary Public

New York County Clerk's No. 3

New York County Register No. 5-T-63

Commission expires March 30, 1935.

State of California,  
County of Los Angeles—ss.

On this 5th day of April, in the year 1933, A. D., before me, M. B. Liggett, a Notary Public in and for the said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared W. J. Downey, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal]                      M. B. LIGGETT

Notary Public in and for the County of  
Los Angeles, State of California

My Commission expires Feb. 20, 1936.

## Imperial Paper &amp; Color Corp.

	Combined	Adjustments	As Adjusted Jan. 1 to Feb. 28, 1933
5,695.39			
4,376.00			
3,819.93			
1,327.13			
2,375.56	17,594.01		17,594.01
<u>4,689.37</u>			
3,216.36			
3,139.97			
873.31			
1,482.42	13,406.43	593.57 (20% gross)	14,000.00
	<u>4,187.58</u>		3,594.01
54.65			54.65
90.92		23.11	114.03
989.42			989.42
326.17			326.17
44.72		15.00	59.72
—		(125.00)	
—		(154.00)	279.00
47.40		92.60	140.00
11.08			11.08
275.00		158.34	116.66
12.88			12.88
93.32			93.32
68.30		6.70	75.00
2.54		60.94	63.48
124.11			124.11
338.18		169.09	507.27
800.00			800.00
1,170.00			1,170.00
113.51 (R. G. Dun)		10.00	123.51
192.77		45.00	147.77
30.94		33.83	64.77
510.71		409.00	101.71
—		265.06	265.66
—	5,296.62	50.00	50.00
<u>—</u>	<u>1,109.04*</u>		<u>5,690.21</u>
			2,003.20*

\*In red ink.

616.87				
477.34				
40.00				
29.76	1,163.97			1,163.97
	<u>54.93</u>	1,599.50	612.34	932.23*

\*In red ink.

## Exhibit "A"

Downey &amp; Gotwals

Profit and Loss Account

2/28/33

Profit and Loss Account According to the Books

	January, 1933	February, 1933
<b>Sales—</b>		
Sanitas .....	3,777.88	1,917.51
T. O. C. ....	1,865.90	2,510.10
M. L. C. ....	2,406.75	1,413.18
Wall Paper .....	576.54	750.59
Paint .....	1,160.19	1,215.37
	<u>9,787.26</u>	<u>7,806.75</u>
<b>Purchases—</b>		
Sanitas .....	3,192.00	1,497.37
T. O. C. ....	1,316.19	1,900.17
M. L. C. ....	1,942.23	1,197.74
Wall Paper .....	474.05	404.26
Paint .....	768.00	714.42
	<u>7,692.47</u>	<u>5,713.96</u>
	2,094.79	2,092.79
<b>Expenses—</b>		
Advertising .....	20.00	34.65
Auto Expense .....	62.04	28.88
Commissions paid .....	475.85	513.57
Discount Allowed .....	167.65	158.52
Heat, Light and		
Water .....	14.72	30.00
Insurance .....	—	—
Interest Expense .....	47.40	—
Legal .....	7.50	3.58
Miscellaneous .....	—	275.00

Office .....	12.88	—		
Freight .....	64.38	28.94		
Printing and Stationery .....	—	68.30		
Taxes .....	1.24	1.30		
Postage .....	54.08	70.03		
Bad Debts (2% on Sales) .....	189.68	148.50		
Rent .....	400.00	400.00		
Salaries .....	585.00	585.00		
Selling Expenses .....	86.88	26.63		
Store Expense .....	87.04	105.73		
Telephone and Telegraph .....	1.37*	32.31		
Traveling .....	58.40	452.31		
Depreciation .....	—	—		
Wall Paper Sample Books .....	—	2,333.37	—	2,963.25
		<u>238.58*</u>		<u>870.46*</u>
Other Income				
Commissions Earned	235.12		381.75	
Discount and Interest Earned	268.67		208.67	
Rent Income	—		40.00	
Bad Debt Recoveries	13.00	516.79	16.76	647.18
Net Profit or Loss before Partners				
Drawings		278.21		223.28*

\*In red ink.



EXHIBIT "B"

\$14,000.00

Los Angeles, California, April 1, 1933

On demand, for value received, I promise to pay to Standard Textile Products Company, or order, at Los Angeles, California, the sum of Fourteen Thousand & 00/100 Dollars, with interest from date until paid at the rate of six per cent per annum, payable quarterly.

Should the interest not be so paid, it shall thereafter bear like interest as the principal. The undersigned further promises to pay all costs of collection, including attorney's fees, which may be incurred in the collection of this note, or any portion thereof, and in case suit is instituted for such purpose, the amount of such attorney's fees shall be such amount as the court shall adjudge reasonable. Principal and interest payable in gold coin of the United States of the present standard. The makers, sureties, guarantors and endorsers of this note hereby waive diligence, protest, demand and notice of every kind.

W. J. DOWNEY

[Endorsed]: Wilbur J. Downey. Filed in the office of the Referee in Bankruptcy, in case No. 33121-M this 14 day of Dec. 1938 at 3 o'clock P.M. and withdrawn on substituting a true copy on the 14 day of Dec. 1938. Hugh L. Dickson, Referee in Bankruptcy Los Angeles County Southern District of California. By E. Booker.

## EXHIBIT "C"

\$111,060.72

Los Angeles, California, April 1, 1933

On demand, for value received, I promise to pay to Standard Textile Products Company, or order, at Los Angeles, California, the sum of One hundred eleven thousand and sixty and  $72/100$  Dollars, without interest.

The undersigned further promises to pay all costs of collection, including attorney's fees, which may be incurred in the collection of this note, or any portion thereof, and in case suit is instituted for such purpose, the amount of such attorney's fees shall be such amount as the court shall adjudge reasonable. Principal and interest payable in gold coin of the United States of the present standard. The makers, sureties, guarantors and endorsers of this note hereby waive diligence, protest, demand and notice of every kind.

W. J. DOWNEY

[Endorsed]: Wilbur J. Downey. Filed in the office of the Referee in Bankruptcy, in case No. 33121-M this 14 day of Dec. 1938 at 3 o'clock P.M. and withdrawn on substituting a true copy on the 14 day of Dec. 1938. Hugh L. Dickson, Referee in Bankruptcy, Los Angeles County, Southern District of California. By E. Booker.

[Endorsed]: Filed Jan. 10, 1939. R. S. Zimmerman, Clerk.

**United States Circuit Court of Appeals  
for the Ninth Circuit**

**Excerpt from Proceedings of Monday, August  
12, 1940.**

**Before: Wilbur, Denman and Mathews,  
Circuit Judges.**

**ORDER DIRECTING FILING OF OPINION  
AND FILING AND RECORDING OF DE-  
CREE**

By direction of the Court, ordered that the type-written opinion this day rendered by this Court in above cause be forthwith filed by the clerk, and that a decree be filed and recorded in the minutes of this court in accordance with the opinion rendered.

In the United States Circuit Court of Appeals  
for the Ninth Circuit

No. 9422

Aug. 12, 1940

IMPERIAL PAPER & COLOR CORPORATION,  
Appellant,

vs.

PAUL W. SAMPSELL, Trustee,

Appellee.

### OPINION

Appeal From the District Court of the United  
States for the Southern District of California,  
Central Division.

Before: Wilbur, Denman and Mathews, Circuit  
Judges.

Mathews, Circuit Judge:

Wilbur J. Downey filed a voluntary petition in bankruptcy on November 18, 1938. Adjudication followed on November 19, 1938. Appellee was appointed trustee and, as such, took possession of and sold property—a stock of merchandise—belonging to Downey Wall Paper & Paint Company, a California corporation. Thereafter appellant, a creditor of the corporation, filed its claim for \$5,415.95. This was a claim against the proceeds of the corporation's property which were then, and presumably are still, in appellee's hands. As against said proceeds, appellant prayed that its claim be



accorded priority over those of the bankrupt's creditors. To this appellee objected. A hearing was had and, on September 28, 1939, the referee entered an order which allowed appellant's claim as a general unsecured claim against the bankrupt estate, disallowed it as a prior claim and declared that appellant had no right to the proceeds of the corporation's property except as a general unsecured creditor of the bankrupt. The referee's order was reviewed and affirmed. From the order of affirmance this appeal is prosecuted.

The record<sup>1</sup> discloses the following facts:

Prior to filing his petition in bankruptcy, the bankrupt was at all pertinent times a retail merchant residing and doing business in Los Angeles, California. Prior to April 1, 1933, he and one Gotwals were partners doing business as Downey & Gotwals. On April 1, 1933, Downey & Gotwals owed Standard Textile Products Company (hereinafter called Standard) for merchandise sold and delivered to them \$126,360.72. On April 1, 1933, the partnership was dissolved. Of the \$126,360.72 which the partners owed Standard, the bankrupt assumed and agreed to pay \$125,060.72. In evidence thereof, he executed and delivered to Standard two promissory notes dated April 1, 1933, payable on demand—one for \$111,060.72, without interest, and one for

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<sup>1</sup> The record on appeal consists of (1) a record filed on January 17, 1940, and (2) a supplemental record filed on July 12, 1940, pursuant to Rule 75(h) of the Federal Rules of Civil Procedure, 28 U.S.C.A. following § 723c.

\$14,000, with interest at 6% per annum payable quarterly.<sup>2</sup>

Also, on April 1, 1933, the bankrupt and Standard entered into a contract<sup>3</sup> whereby Standard appointed the bankrupt as one of its distributing agents and agreed to provide him with a "consigned stock of its products"<sup>4</sup> sufficient to enable him to carry on business as such distributing agent. The bankrupt agreed to carry on said business and to pay Standard, for application on his notes, "all of the net proceeds derived by [the bankrupt] from the operation of said business in excess of the actual operating overhead, including any money realized by [the bankrupt] from the sale and/or liquidation of any or all of his assets, irrespective of whether derived from said business or not."

The bankrupt's contract with Standard did not preclude him from carrying on a general mercantile business. He did carry on such business from April 1, 1933, until the filing of his petition in bankruptcy. Part of his stock in trade was obtained from Standard, part of it elsewhere. Prior to July 28, 1936, he dealt, among other things, in

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<sup>2</sup> These facts appear from one of the two proofs of debt filed by Standard's assignee, Standard Coated Products Corporation. Both proofs are part of the supplemental record on appeal.

<sup>3</sup> A copy of the contract is attached to one of the two proofs of debt mentioned in footnote 2.

<sup>4</sup> Standard was a manufacturer or wholesaler of oilcloth and the like.

wall paper and paint, neither of which was obtained from Standard.

Appellant was at all pertinent times a manufacturer or wholesaler of wallpaper. In April, 1936, the bankrupt, desiring to purchase wall paper from appellant on credit, conferred with appellant's president and was told by him that appellant would extend no credit to the bankrupt unless the bankrupt's indebtedness to Standard was settled. The bankrupt's indebtedness to Standard was never settled. Consequently, appellant never sold the bankrupt any wall paper and never became a creditor of the bankrupt.

On June 17, 1936, the bankrupt's attorney, Frank S. Hutton, acting for and on behalf of the bankrupt, advised appellant that the corporation—Downey Wall Paper & Paint Company—was being organized with a capital of \$15,000, with the bankrupt, his wife (Mildred Downey) and his son (David Downey) as incorporators; that its capital stock (\$15,000) would be issued to its incorporators, one-third to each, and would be paid for by them; and that the bankrupt proposed to sell the corporation his then existing stock of wall paper and paint.

The corporation was organized on or about July 1, 1936. Its incorporators and shareholders were the bankrupt, his wife and his son. Its shares had a par value of \$100 each.<sup>5</sup> We assume—there being

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<sup>5</sup> This appears from Schedule B(3-b) annexed to the petition in bankruptcy. Schedule B(3-b) is part of the supplemental record on appeal.

no evidence to the contrary—that the shares were issued and paid for as the bankrupt's attorney had told appellant they would be. Thus we assume that 50 shares were issued to and paid for by each of the incorporators. The bankrupt apparently did not retain all of his 50 shares. In Schedule B(3-b) annexed to his petition in bankruptcy, he stated that, at the time of filing the petition, he owned 27 shares. In his testimony before the referee, he stated that, at the time of filing the petition, he owned five shares. Which, if either, statement was correct we do not know. It is clear, however, that the bankrupt never owned more than one-third of the corporation's stock and, at the time of filing the petition, may have owned as little as one-thirtieth.

On July 21, 1936, the bankrupt, pursuant to the California bulk sales law (Civil Code, § 3440), recorded in the office of the county recorder a notice of the intended sale of his then existing stock of wall paper and paint to the corporation. The notice stated that the sale would be made on July 28, 1936, for a consideration of \$7,500 represented by the corporation's promissory note payable six months from that date. The sale was made pursuant to the notice. Thereafter the corporation dealt in wall paper and paint, and the bankrupt dealt in other merchandise. The corporation and the bankrupt occupied the same premises, the corporation being the bankrupt's tenant. There was, however, no intermingling of their goods. The corporation's business was separate and distinct from that of the bankrupt.



At the time of the sale by the bankrupt to the corporation—July 28, 1936—Standard was the bankrupt's only creditor. At that time the contract of April 1, 1933, between Standard and the bankrupt<sup>6</sup> was still in force. Thereby the bankrupt was required to, and presumably he did, pay over to Standard or its assignee,<sup>7</sup> for application on his notes, all money realized from the sale made by him to the corporation on July 28, 1936.

The bankrupt received in consideration of the sale the corporation's note for \$7,500, of which it is conceded \$5,000 was paid. The bankrupt testified before the referee that the balance (\$2,500) was not paid. As to this, however, the bankrupt's testimony may well be doubted. From Schedule B(2-b) annexed to the petition in bankruptcy, it appears that, at the time of filing the petition, the bankrupt did not own or hold any promissory note. From Schedule A(3) and from a proof of debt filed by the corporation,<sup>8</sup> it appears that, at the time of filing the petition, the bankrupt was not a creditor of the corporation, but was indebted to it in the sum of \$1,625. Therefore, we think it may reasonably be inferred that the corporation's note for \$7,500 was

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<sup>6</sup> See footnote 3.

<sup>7</sup> On November 29, 1937, all property and assets of Standard, including the bankrupt's notes and all rights of Standard under its contract with the bankrupt, were assigned and transferred to Standard Coated Products Corporation.

<sup>8</sup> Schedules A(3) and B(2-b) and the corporation's proof of debt are part of the supplemental record on appeal.

fully paid, and that Standard or its assignee received the full amount thereof.<sup>9</sup>

Standard and its assignee were fully advised of the sale by the bankrupt to the corporation. Neither of them objected or complained. Instead, with full knowledge of the sale, Standard and its assignee extended further credit to the bankrupt to the amount of more than \$5,000.<sup>10</sup>

Between September 26, 1936, and September 26, 1938, appellant sold and delivered to the corporation, on credit, wall paper for which, on September 26, 1938, the corporation owed appellant \$5,415.95. In evidence thereof, the corporation executed and delivered to appellant four promissory notes dated September 26, 1938—three for \$1,500 each payable in two, three and four months, respectively, and one for \$915.95 payable in five months, all bearing 6% interest from date. No part of this indebtedness has been paid. Payment thereof from the proceeds of the corporation's property was and is sought by appellant in this proceeding.

Appellee's objections to appellant's claim were (1) that appellant's proof of debt did not state facts sufficient to bring said claim within the provisions of § 64(a) or (b) of the Bankruptcy Act,<sup>11</sup> relating

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<sup>9</sup> It is undisputed that, prior to the filing of the petition in bankruptcy, Standard or its assignee received from the bankrupt, for application on his notes, sums aggregating more than \$25,000.

<sup>10</sup> This appears from one of the two proofs of debt mentioned in footnote 2.

<sup>11</sup> 11 U.S.C.A. § 104(a); (b).

to "Debts [of bankrupts] which have priority;" and (2) that it appeared on the face of said proof that the debt due appellant was contracted on open account and wholly unsecured, and that appellant did not have or claim any lien on the assets of the bankrupt estate—all of which was quite true and quite immaterial. For the debt due appellant was not a debt of the bankrupt, but was a debt of the corporation. Appellant's claim was not a claim against the bankrupt estate, but was a claim against the proceeds of the corporation's property.

By the referee's order, the corporation's property and the proceeds thereof were treated as part of the bankrupt estate. In justification of the order, two contentions are made: (1) That the sale by the bankrupt to the corporation on July 28, 1936, of the bankrupt's then existing stock of wall paper and paint was made with intent to delay or defraud the bankrupt's creditors and was, therefore, void against such creditors and against appellee;<sup>12</sup> and (2) that the corporation was the bankrupt's alter ego.

First. We do not think the evidence shows that the sale by the bankrupt to the corporation was made with intent to delay or defraud any creditor of the bankrupt. But even if it did, that would not justify the referee's order, for the sale did not involve any property dealt with or affected by the referee's order. The sale was, as previously stated, a sale on July 28, 1936, of the bankrupt's then exist-

<sup>12</sup> California Civil Code, § 3439.

ing stock of wall paper and paint. That stock was disposed of by the corporation long prior to the filing of the petition in bankruptcy. Appellee never got possession of that stock or any part of it. The referee's order dealt, not with that stock, but with other property of the corporation—property which appellee took possession of and sold—and with the proceeds thereof in appellee's hands. That property was not purchased from the bankrupt.<sup>13</sup> The bankrupt never owned it, never had possession of it, never sold it or attempted to sell it. Therefore, the fact, if it be a fact, that the sale on July 28, 1936, of the bankrupt's then existing stock of wall paper and paint was made with intent to delay or defraud the bankrupt's creditors is, for present purposes, immaterial.

Second. The corporation was organized under and existed by virtue of the laws of California. Its business was transacted in California, its property was in California and its stockholders, including the bankrupt, resided in California. This case was tried in a Federal court sitting in California. Hence, in determining the relationship of the corporation and the bankrupt to each other and the effect thereof, the applicable law is that of California. In California, when one person owns all the stock of a corporation and uses the corporation as a mere conduit for the transaction of his own business, the corporation is regarded as his alter ego. *Wenban Estate v. Hewlett*, 193 Cal. 675, 227 P. 723. See, also, *Mini-*

<sup>13</sup> Most of it was purchased from appellant.



fie v. Rowley, 187 Cal. 481, 202 P. 673; D. N. & E. Walter & Co. v. Zuckerman, 214 Cal. 418, 6 P.2d 251; In re Sterling, 9 Cir., 97 F.2d 505.

In this case the referee's certificate stated that on April 7, 1939—several months prior to the order under review—he, the referee, had made an order “decreeing [the corporation] to be the alter ego of the bankrupt.” But, as also appears from the referee's certificate, appellant was not a party to the order of April 7, 1939, or to the proceeding in which it was made and, consequently, was not bound thereby. In the case at bar, appellee did not allege or ask the referee to hold that the corporation was the bankrupt's alter ego, nor did the facts warrant such a holding. For the bankrupt did not own all or even a majority of the corporation's stock. The evidence is that he owned less than one-fifth of it.

But even if it were true that the corporation was the bankrupt's alter ego, that would not justify the order under review. For not only did that order treat the corporation as the bankrupt's alter ego; it disregarded the existence of the corporation as a separate legal entity. To warrant such disregard of the corporation's separate existence it was necessary to show, not only that it was the bankrupt's alter ego, but that to recognize its separate existence would promote fraud, defeat justice or produce inequitable results. *Erkenbrecher v. Grant*, 187 Cal. 7, 200 P. 641; *Minifie v. Rowley*, *supra*; *Wenban Estate v. Hewlett*, *supra*; *Midwest Air Filters Pacific v. Finn*, 201 Cal. 587, 258 P. 382; *Continental Se-*

curities & Investment Co. v. Rawson, 208 Cal. 228, 280 P. 954; Wood Estate Co. v. Chanslor, 209 Cal. 241, 286 P. 1001; D. N. & E. Walter & Co. v. Zucker-  
man, *supra*; Hollywood Cleaning & Pressing Co. v. Hollywood Laundry Service, 217 Cal. 124, 17 P.2d 709; Dos Pueblos Ranch & Improvement Co. v. Ellis, 8 Cal. 2d 617, 67 P.2d 340; In re Sterling, *supra*.

There was no such showing. Instead, it clearly appears that to disregard the existence of the corporation as a separate entity would do appellant a grave and palpable injustice. As against appellant, the corporation's property never belonged to the bankrupt or to the bankrupt estate; appellee never had any right to take possession of or sell said property; having done so, he never had, nor has he now, any right to the proceeds thereof. Appellant's claim should be allowed and, as a claim against the proceeds of the corporation's property, should be accorded priority, as prayed by appellant.

Order reversed and case remanded for further proceedings in conformity with this opinion.

(Endorsed:) Opinion. Filed Aug. 12, 1940. Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals  
for the Ninth Circuit

No. 9422

IMPERIAL PAPER & COLOR CORPORATION,  
Appellant,

vs.

PAUL W. SAMPSELL, Trustee, etc.,  
Appellee.

DECREE

Appeal from the District Court of the United States for the Southern District of California, Central Division.

This cause came on to be heard on the Transcript of the Record from the District Court of the United States for the Southern District of California, Central Division, and was duly submitted:

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the order of the said District Court in this cause be, and hereby is, reversed with costs in favor of the appellant and against the appellee, and that this cause be, and hereby is remanded to the said District Court for further proceedings in conformity with the opinion of this court.

It is further ordered, adjudged, and decreed by this Court, that the appellant recover against the appellee for its costs herein expended, and have execution therefor.

[Endorsed]: Filed and entered August 12, 1940.  
Paul P. O'Brien, Clerk.

United States Circuit Court of Appeals  
for the Ninth Circuit

Excerpt from Proceedings of Saturday, September 7, 1940.<sup>†</sup>

Before: Wilbur, Denman and Mathews, Circuit Judges.

[Title of Cause.]

ORDER DENYING PETITION FOR  
REHEARING

Upon consideration thereof, and by direction of the Court, Ordered that the petition of appellee, filed September 5, 1940, and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

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[Title of Circuit Court of Appeals and Cause.]

PRAECIPE FOR RECORD ON WRIT OF  
CERTIORARI

To Paul P. O'Brien, Clerk in the Above Named Court:

Please prepare and print the record in the above entitled action for use in connectoin with the petition for writ of certiorari in the Supreme Court of the United States, as follows:

1. Printed transcript in the United States Circuit Court of Appeals;

2. Schedules "A" and "B" annexed to the Petition in Bankruptcy filed by Wilbur J. Downey, Bankrupt;



3. All Proofs of Claim filed by the creditors of said bankrupt other than appellant, Imperial Paper & Color Corporation;

4. Findings of Fact and Conclusions of Law and Order Quieting Title of assets, and the Petition on which it was based;

5. Order of July 11, 1940 entered by the Circuit Court of Appeals for transmittal of the foregoing documents.

Dated/ October 26, 1940.

CRAIG & WELLER,

By THOMAS S. TOBIN,

Attorney for Petitioner.

[Endorsed]: Filed Oct. 28, 1940. Paul P. O'Brien, Clerk.

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[Title of Circuit Court of Appeals and Cause.]

ADMISSION OF SERVICE OF PRAECIPE  
FOR RECORD ON WRIT OF CERTIORARI

The undersigned attorney for the Respondent, Imperial Paper and Color Corporation, hereby admits service of a full, true and correct copy of Praecipe for Record on Writ of Certiorari.

Dated: November 1, 1940.

HIRAM E. CASEY,

By B. KING,

Attorney for Respondent.

[Endorsed]: Filed Nov. 2, 1940. Paul P. O'Brien, Clerk.

[Title of Circuit Court of Appeals and Cause.]

**CERTIFICATE OF CLERK, U. S. CIRCUIT  
COURT OF APPEALS FOR THE NINTH  
CIRCUIT, TO RECORD CERTIFIED UN-  
DER RULE 38 OF THE REVISED RULES  
OF THE SUPREME COURT OF THE  
UNITED STATES.**

I, Paul P. O'Brien, as Clerk of the United States Circuit Court of Appeals for the Ninth Circuit, do hereby certify the foregoing two hundred thirteen (213) pages, numbered from and including 1 to and including 213, to be a full, true and correct copy of the entire record of the above-entitled case in the said Circuit Court of Appeals, made pursuant to request of counsel for the appellee, and certified under Rule 38 of the Revised Rules of the Supreme Court of the United States, as the originals thereof remain on file and appear of record in my office.

Attest my hand and the seal of the said the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, in the State of California, this 8th day of November, 1940.

[Seal]

PAUL P. O'BRIEN, Clerk.

## SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 13, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(2891)